88-1962

No._____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

EAST TEXAS STEEL FACILITIES, INC.
Petitioner,

v.

WILLIAM CLARK, Secretary of Interior, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

1

(A) Whether Congress expressly reserved, putting all on specific notice, unlimited power in the Mineral Lands Leasing Act (1920) to rewrite *at will* all federal coal lease contracts every twenty years (and then whenever), unalterably binding lessees to even drastic terms or even canceling the lease (providing thus an unlimited escape clause); and
(B) Whether Congress exercised that power in the Federal Coal Leasing Amendments Act of 1976 (applied as a matter of law on the 20th anniversary of all leases issued before FCLAA's enactment), where neither FCLAA nor Congress expressed that intent.

2

Whether in a commercial transaction, a lease contract (drafted by Interior), the Interior Department properly and without retroactivity applied regulations promulgated under FCLAA (1976) to exercise proprietary, not sovereign powers where:
(1) the current, in force and not-yet-expired option contract provisions (controlled and selected by the option-holder Interior) in statute, regulation, and lease required the timely exercise of performance before or by 20th anniversary of a lease, and
(2) the FCLAA regulations applied, that were still to be incorporated as part of a rewritten contract before any application, provided that notice alone sufficed to exercise acceptance with performance up to two years *after* notice, all unalterably binding on lessee without notice or consent.

* * *

All without violation of contract rights and common rules of option contracts and contract law, applicable laws and regulations, and the Due Process and Impairment of Contracts Clauses.

LIST OF PARTIES

Lone Star Steel Company, Petitioner, v. William Clark, Secretary of the United States Department of the Interior; Robert F. Burford, Director of the Bureau of Land Management of the United States Department of the Interior; Charles W. Luscher, Director, New Mexico State Office of the Bureau of Land Management of the United States Department of the Interior; and the United States Department of the Interior, Respondents.

RULE 28.1 LISTING

The parent company is Lone Star Technologies, Inc. Lone Star Steel Company changed its corporate name on January 31, 1989 to East Texas Steel Facilities, Inc. and is a wholly-owned subsidiary of Lone Star Technologies, Inc. Lone Star Steel Company remains in being as a holding company. Lone Star Technologies, Inc. and East Texas Steel Facilities, Inc. have no subsidiaries except wholly-owned subsidiaries.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
RULE 28.1 LISTING	ii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	2
JURISDICTION	2
STATUTORY AND REGULATORY PROVISION INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	12
The Case Has National Implications and Tenth Circuit Rulings Effectively Foreclose Future Cases	12
Conflict with Supreme Court Precedent	14
1. *Leases Issued Under MLLA Are Valid Contracts Governed by the Common Rules of Contract Law*	15
2. *The Court of Appeals Construction of the Leases Makes the Leases Illusory Contracts*	17
3. *Congress Did Not Exercise in FCLAA Any Reserved Powers in MLLA to Rewrite MLLA Leases*	19
CONCLUSION	20

APPENDICES 1a

Appendix A. Judgment of the United States Court of Appeals for the Tenth Circuit 1a

Appendix B. Opinion and Judgment of the United States District Court for the Eastern District of Oklahoma 4a

Appendix C. Decisions of the United States Department of the Interior, Interior Board of Land Appeals:
65 IBLA 147 (1982) 13a
71 IBLA 92 (1983) 21a
77 IBLA 96 (1983) 27a
84 IBLA 77 (1984) 31a

Appendix D. Decisions of BLM New Mexico State Office:
Decision of February 17, 1979 38a
Decision of October 29, 1981 42a
Decision of September 26, 1983 47a

Appendix E. BLM Notices of Intent to Readjust Lone Star Steel Co's. Federal Coal Leases:
Notice of February 19, 1979
Lease No. NM 059992 OK 49a
Notice of February 19, 1979
Lease No. NM 050405 OK 51a
Notice of February 19, 1979
Lease No. NM 050406 OK 53a
Notice of November 19, 1979
Lease No. NM 059996 OK 55a
Notice of October 20, 1981
Lease No. BLM-C-018820 OK 56a

Appendix F. Lone Star Steel Company's Unexecuted Federal Coal Leases as Readjusted by BLM:
Lease No. NM 059992 Oklahoma 57a
Lease No. NM 050405 Oklahoma 69a
Lease No. NM 050406 Oklahoma 81a
Lease No. NM 059996 Oklahoma 93a
Lease No. BLM-C-018820 Oklahoma 108a

Appendix G. Lone Star Steel Company's Original Federal Coal Leases Before Readjustment by BLM:
Lease No. NM 059992 Oklahoma 123a
Lease No. NM 050405 Oklahoma 132a
Lease No. NM 050406 Oklahoma 141a
Lease No. NM 059996 Oklahoma 150a
Lease No. BLM-C-018820 Oklahoma 154a

Appendix H. Federal Coal Leasing Amendments Act:
Preamble 163a
Section 6 163a

Appendix I. Mineral Lands Leasing Act of 1920 (MLLA):
Section 7 166a
Section 31(a) 167a

Appendix J. *FMC Wyoming Corp. v. Hodel*, 816 F.2d 502 (10th Cir. 1987) 168a

Appendix K. *Coastal States Energy Co. v. Hodel*, 816 F. 2d 502 (10th Cir. 1987) 178a

Appendix L. Department of the Interior Lease Readjustment Regulations Promulgated Pursuant to FCLAA (1976):
43 Code of Federal Regulations Subpart 3451 188a
43 Code of Federal Regulations 3522.2-1 (1977) 191a

Appendix M. Department of the Interior Regulation In Force at Issuance of LSS's Coal Leases:
43 Code of Federal Regulations § 193.16 (1954) 192a
43 Code of Federal Regulations §3522.2-1 (1974) 193a

Appendix N. *Rosebud Coal Sales Co. v. Andrus*, 667 F. 2d 949 (10th Cir. 1982) 194a

Appendix O. Table 1 202a

TABLE OF AUTHORITIES

CASES: Page

Andrus v. Udall, 446 U.S. 500 (1980).....13
Boesche v. Udall, 373 U.S. 472 (1963)..... 15
Bowen v. Agencies Opposed to Social Security Entrapment, 477 U.S. 41 (1986).....10
Chevron U.S. A. Inc. v. NRDC, Inc., 467 U. S. 837 (1984).....5
Coastal States Energy Co. v. Watt, 629 F. Supp. 9 (D. Utah 1985).....7,8,12,18
Coastal States Energy Co. v. Hodel, 816 F.2d 502 (10th Cir. 1987).....7
Cooke v. United States, 91 U.S. 389 (1875).....15
Farmers & Mechanics Savings Bank of Minneapolis v. Minnesota, 232 U.S. 516 (1914).....17
FMC Wyoming Corp. v. Watt, 816 F.2d 496 (10th Cir. 1987), *cert. den.*, 108 S.Ct. 772 (1988) (1988).....2,7,8,12,14,15,19
Harvey v. Udall, 384 F.2d 883 (10th Cir. 1967).....10
Larionoff v. United States, 533 F. 2d 1167 (D.C. Cir. 1976), *aff'd*, 431 U.S. 864 (1977).....18
Lynch v. Alworth-Stephens Co., 267 U. S. 364 (1925).....15
Lynch v. United States, 292 U.S. 571 (1934).....19
Lone Star Steel Co. v. Clark, No. 84-583-C (E D. Okla. June 30, 1986.....2,7,4a
Lone Star Steel Co. v. Clark, No. 86-2146 (10th Cir. November 23, 1988).....2,1a
National Railroad Passenger Corporation v. Atchison, Topeka & Santa Fe Railway Co., et al., 470 U.S. 451 (1985).....15,18
Pan American Petroleum & Transp. Co. v. United States, 273 U.S. 456 (1927)..... 15
Perry v. United States, 294 U.S. 330 (1934).....19
Rosebud Coal Sales Co. v. Andrus, 667 F. 2d 949 (10th Cir. 1982).....4,5,9,15, 17
Shields v. Ohio, 95 U.S. 319 (1877).....19
Sinking-Fund Cases, 99 U.S. 700 (1879).....18,19

TABLE OF AUTHORITIES--Continued

CASES: (continued) Page

Stitt v. Huidekopers, 84 U. S. (17 Wall) 384 (1873).....16
Stockley v. United States, 260 U.S. 532 (1923).....19
Udall v. Tallman, 380 U.S.1, *reh den.*(1965).....15
United States v. Dalcour, 203 U.S. 408 (1906).....18
United States v. Essley, 284 F. 2d 518 (10th Cir. 1960).....10
United States v. Seckinger, 397 U.S. 203 (1970).....18
Waterman v. Banks, 144 U.S. 394 (1891).....16
Walter E. Heller and Co. v. American Flyers Airline Corp., 459 F2d 896 (2nd Cir. 1972).....17
Willard, Sutherland & Co. v. United States, 262 U. S. 489 (1918).....17

CONSTITUTION

Due Process Clause.....11,19

STATUTES AND LEGISLATIVE MATERIALS

28 U.S.C. § 1254 (1) (1982).....2
Act of June 8, 1926 § 1, 30 U.S.C. § 291.....12
Act of February 7, 1927 § 3, 30 U.S.C. § 283.....12
Judiciary Act of 1891, 28 U.S.C. §225.....10
Mineral Lands Leasing Act of 1920, 30 U. S. C. § 181, *et seq.* (1970).....i-20
Section 7, 30 U.S.C. § 207.....i-20
Section 17, 30 U.S.C. § 226.....12
Section 24, 30 U.S.C. § 262.....12
Section 31, 30 U.S.C. §188 (1970).....3,167a
Section 32, 30 U.S.C. §189 (1982).....5
Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 181, *et seq* (1982).....i,1,2,3,163a-165a
Section 6, 30 U.S.C. § 207.....i-20
51 *Cong. Rec.* 14945 (1914) (statement of Rep. Thomson).....11

TABLE OF AUTHORITIES--Continued

STATUTES AND LEGISLATIVE MATERIALS: (continued) Page

51 *Cong. Rec.* 14954 (1914) (statement of Rep. Mondell).....11
51 *Cong. Rec.* 15190 (1914) (H.B. 16136 identical to MLLA § 7).....11
51 *Cong. Rec.* 15277 (1914) (Mondell Amendment).....11
51 *Cong. Rec.* 15278 (1914) (statement of Rep. Graham).....11
53 *Cong. Rec.* 1045 (1916) (statement of Rep. Mondell).....11
58 *Cong. Rec.* 4112 (1919) (statement of Sen. Smoot).....11
58 *Cong. Rec.* 7511 *et seq.* (1919).....11
58 *Cong.Rec.* 7511(1919)(statement of Rep.Farris)....11
58 *Cong. Rec.* 7643 (1919) (statement of Rep. Anderson).....11
H.R. Rep. No. 668, 63rd Cong., 2nd Sess. (1914)...11
H.R. Rep. No. 17, Part 1, Part 2 (Minority Views), 64th Cong., 1st Sess. (1916).....11

ADMINISTRATIVE AND EXECUTIVE MATERIALS:

43 C.F.R. § 193.16 (Revised 1954).....2,5,8,9,15,16
43 C.F.R. Subpart 3451..... 2,4,8,9
43 C.F.R. § 3522.2-1(1977).....2,3,4
Decisions of the United States Department of the Interior Board of Land Appeals:
Lone Star Steel Co., 65 IBLA 146 (1982).....2
Lone Star Steel Co., 71 IBLA 92 (1983).....2,6
Lone Star Steel Co., 77 IBLA 96 (1983).....2
Lone Star Steel Co., 84 IBLA 77 (1984).....2
Public Land Law Review Commission, *One Third of the Nation's Land, A Report to the President and the Congress* (1970).....12

TABLE OF AUTHORITIES--Contir.ued

ADMINISTRATIVE AND EXECUTIVE MATERIALS: Page (continued)

U. S. Congress, Office of Technology Assessment, *Potential Effects of Section 3 of the Federal Coal Leasing Amendments Act of 1976--A Special Report*, OTA-ITE-300 (March 1986).....12

MISCELLANEOUS:

1 A. Corbin. *Corbin on Contracts* (1960)(1963).10,17
1A A. Corbin. *Corbin on Contracts* (1963).....17
3 A. Corbin. *Corbin on Contracts* (1960) (1963).....5,10,18
1A *Sutherland Statutory Construction* § 21.05 (1968 -1972).....11
Restatement (Second) of Contracts §77 (1979).....18

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LONE STAR STEEL COMPANY,
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WILLIAM CLARK, Secretary of Interior, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Lone Star Steel Company respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered on November 23, 1988, applying, without distinction, the law of the circuit : (1) that Congress in the Mineral Lands Leasing Act reserved unlimited power to rewrite at will federal coal lease contracts every twenty years; thereby to mandate even drastic terms or provide an unlimited escape clause by canceling the lease, all unalterably binding on lessee, (2) that Congress exercised that power by the Federal Coal Leasing Amendments Act, and (3) that Interior timely and properly applied FCLAA even when applied before current contract terms expired and FCLAA terms were not yet part of any rewritten contract.

OPINIONS BELOW

The Judgment of the United States Court of Appeals, reproduced as Appendix A, 1a-3a, is unpublished. The Opinion and Judgment of the United States District Court for the Eastern District of Oklahoma, reproduced as Appendix B, 4a-12a, is unpublished. The Decisions of the United States Department of the Interior, Interior Board of Land Appeals ("IBLA"), reproduced as Appendix C, 13a-37a, are reported at 65 IBLA 146 (1982), 71 IBLA 92 (1983), 77 IBLA 96 (1983), and 84 IBLA 77 (1984). The Decisions of the New Mexico State Office of the Bureau of Land Management, U. S. Department of the Interior is reproduced as Appendix D, 38a-48a. As the United States Court of Appeals for the Tenth Circuit cites as the law of the circuit the companion cases of *FMC Wyoming Corp. v. Hodel*, 816 F.2d 496 (10th Cir. 1987)("*FMC*") and *Coastal States Energy Company v. Hodel*, 816 F.2d 502 (10th Cir. 1987)("*Coastal*"), both cases are reproduced in full in Appendices J, 168a-177a and K, 178a-187a respectively.

JURISDICTION

The Judgment of the Court of Appeals was entered on November 23, 1988. A Petition for Rehearing was filed on January 5, 1989, and denied on February 17, 1989. Jurisdiction to review the judgment of the Court of Appeals by Writ of Certiorari exists under 28 U.S.C. § 1254(1)(1982).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Sections 7 and 31(a) of the Mineral Lands Leasing Act ("MLLA") of 1920, 30 U.S.C. §§ 207 (1970), 188(a) (1970) (1982), reproduced as Appendix I, 166a-167a. Section 6 of the Federal Coal Leasing Amendments Act ("FCLAA") of 1976, 30 U.S.C. § 207 (1982), reproduced as Appendix H, 163a-165a. Title 43 C.F.R. §3451 (1979), §3522.2-1 (1977), reproduced as Appendix L, 188a-191a. Title 43 C.F.R. § 193.16 (Rev. 1954), § 3522.2-1 (1974) reproduced as Appendix M, 192a-193a.

STATEMENT OF THE CASE

The Questions Presented in this case concern a commercial transaction governed by the common rules of contract law where the drafting party had an option to change freely (or cancel) all terms at will *at* 20 years, but *before* 20 years expired unilaterally postponed timely performance until long *after* the 20th year and made promise to perform (notice) suffice for acceptance, all unalterably binding on the second party.

From 1959 to 1962 LSS entered into five coal leases with the United States through the Bureau of Land Management ("BLM") pursuant to the Mineral Lands Leasing Act ("MLLA") of 1920, 30 U.S.C. § 207 (1970). *See* Appendix G, 123a-162a for LSS's leases. MLLA § 7 vested the contract and property rights conveyed by the federal leases. A coal lease was indeterminate, the life of the mine. It was subject to an option, the lessor's right to readjust terms "at the end of each twenty-year" anniversary "unless otherwise provided by law at the time of the expiration of such periods."[1]

A lease incorporated MLLA and "all reasonable regulations of the Secretary of the Interior now in force." No provision existed for the incorporation of new laws, regulations or terms once a lease issued, except on exercise of the option to readjust on a lease's 20th anniversary. The terms, regulations, and law contracted at lease issuance *alone* applied to a lease until its 20th anniversary date.[2]

For a half century no case and controversy arose until Congress amended MLLA with the Federal Coal Leasing Amendments Act ("FCLAA") in 1976.[3] To implement FCLAA Interior adopted new regulations at 43 CFR §3522.2-1. These regulations replaced those in the CFR,[4] for

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1 See Appendix I, 166a-167a for full text of MLLA § 7.

2 MLLA §31 on lease forfeiture expressly held the lessee only to regulations "in force at the date of the lease." 30 U.S.C. §188(a) (1970) (1982), Appendix I, 167a.

LSS does not argue laws invoking sovereign powers not apply to a lease once issued but that new laws with proprietary powers not apply until 20th anniversary.

3 *See* Appendix H, 163a-165a for FCLAA § 6. Table 1 Appendix O, 202a gives the lease terms changed by FCLAA.

4 Simply because these regulations appeared in the CFR does not mean that the FCLAA regulations lawfully replaced the regulations contracted for in the

which a lessee had contracted at lease issuance. *See* Appendix L, 188a-191a.

Interior at first applied the FCLAA regulations even to leases whose 20th anniversary had passed without a change of terms *before* FCLAA's effective date, August 4, 1976. *Rosebud Coal Sales Co. v. Andrus*, however, found Interior had waived its right to readjust terms where a lease's 20th anniversary date passed without notice. 667 F.2d 949 (10th Cir. 1982), reproduced as Appendix N, 194a-201.[5]

For leases, such as LSS's, whose 20th anniversary fell after FCLAA's enactment, Interior first applied a FCLAA regulation which required giving a lessee a notice of intent to readjust. Notice as notice was not new. The pre-FCLAA regulation too required notice before a lease's 20th anniversary. As the Court of Appeals held in *Rosebud*, MLLA, lease and pre-FCLAA regulation expressly required action (performance), but the pre-FCLAA regulation alone added the requirement of timely notice (promise to perform). *Id.* 667 F2d 951, Appendix N, 197a. Thus Interior had to give timely notice (promise to perform) as well as timely performance. The only exception to not performing timely was if "unfeasible" which required a showing of unfeasibility on the part of Interior. See *Rosebud, supra.*, 951, reproduced as Appendix N, 197a-198a, 200a.

Interior's FCLAA notice gave no concrete terms but did state conditions for performance. *See* Appendix E, 49a-56a. The notice stated that readjustment of the lease, would occur under the provisions of 43 CFR 3451 or 43 CFR 3522.2-1 and that readjusted terms were to be sent "within two years" or "when they have been finally determined."[6]

These two FCLAA regulations differ materially from the pre-FCLAA regulation contracted. *See* Appendix L,188a-191a

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[continued from previous page] leases and to which the lessee was held accountable under MLLA § 31(a). Lessee had not agreed to be bound by future or hereinafter promulgated regulations.

5 Interior applied FCLAA's terms in 1977 to Rosebud's coal leases whose 20th anniversary passed in 1975 without notice by Interior and *before* FCLAA's enactment.

6 43 CFR 3451 governed after July 19, 1979; 43 CFR 3522.2-1 from December 29, 1976 until July 19, 1979 (the latter should not be confused with the earlier § 3522.2-1 which was almost word for word the 43 CFR §193.16 regulation.

and M, 191a-193a. As noted above, the pre-FCLAA regulation, 43 CFR § 193.16, required Interior give notice (promise of performance) *and* proposed terms (performance) before a lease's 20th anniversary. The FCLAA regulations re-required only notice (promise to perform) before a lease's 20th anniversary with up to two years to send proposed terms (performance). Thus determining which regulation to apply is material to holding whether the option contract required notice alone, or notice plus performance at 20th anniversary.

By what authority did Interior presume to apply the FCLAA regulations? As noted above, MLLA, regulations at lease issuance, and a lease had no provision for the incorporation of new laws or regulations, except in a readjusted lease on the 20th anniversary. Regulations in force at lease issuance applied to a lease through to its 20th anniversary date. The FCLAA notices did not ask lessee's consent to a change in the option terms to require only notice nor was consent given. The FCLAA regulations on notice and performance were not promulgated to exercise sovereign, but rather proprietary powers in the option contract. While the Secretary as custodian of the public lands had the power to make necessary rules,[7] he had no power, and the statute did not authorize, applying unbargained for rules which excised current, in force and material contract terms. Nor was this within the discretion of the Secretary to fill in a "gap" left by the law, as the option contract's terms were specific concerning notice and performance, and any "gap" had already been filled by 43 CFR § 193.16.[8] Finally, all agree that FCLAA was not to be applied retroactively. It follows that FCLAA regulations were not to be applied retroactively.[9]

No authority existed for applying the FCLAA regulations to the option, allowing Interior to exercise acceptance by mere notice alone when notice plus performance was what the parties contracted for at lease issuance. The action constituted retroactive application of FCLAA, as it actually applied FCLAA to the option contract months before the 20th anniver-

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[7] MLLA § 32, 30 U.S.C. § 189 (1982).

[8] See *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 843-44 (1984). Note that while a court may defer to agency interpretation of statute; government interpretation of a contract must show it is the *only* reasonable one. 3 *Corbin on Contracts* § 559 at 262.

[9] *Rosebud, supra.*, 952, Appendix N, 199a-200a

sary readjustment date. It breached the contract entered into by changing option terms before the current terms expired and the changed option terms were not yet part of any rewritten contract Finally, it did not constitute lawful application of sovereign powers but the unlawful use of federal regulation to increase unilaterally proprietary powers, then bind the lessee, and finally protect the unlawful application by denying lessee immediate access to the law courts until lessee exhausted administrative remedies.

In common commercial transactions the law courts try a breach of contract. As the contract was with the government, however, the lessee had to follow government regulations. These regulations did not allow private parties to object to such a breach, until Interior sent the rewritten contract. Then as part of any objections the lessee had to new terms, the breach of contract became a part. Administrative agencies have special expertise concerning certain contract provisions relating to agency matters. They do not have special knowledge how common rules of contract law are applied to common contract provisions such as notice and performance.

Thus once Interior sent its notice of intent to readjust, it had by its new regulation (to which lessee wished to object) up to two years to send proposed terms. Then, and only then, did the lessee have the opportunity to object. Lessee had 60 days to respond, accept the terms, or relinquish the leases. *See* Appendix F, 57a-122a for the unexecuted rewritten lease contracts; Appendix E, 49a-56a for Interior's notices.

In LSS's case, Interior's decisions dismissed LSS's objections to the rewritten lease contracts and affirmed all terms. Essentially, Interior maintained that the new terms written into the five leases were mandated by law, FCLAA, and that the Secretary of the Interior, had no alternative but to conform to that statutory mandate. *See* Appendix D, 38a-48a.

LSS appealed to the Interior Board of Land Appeals which affirmed the decisions by the Bureau of Land Management. IBLA found the imposition of the FCLAA terms as being mandated by statute and that other terms and conditions imposed on the leases were within the Secretary's discretion as custodian of the public lands. IBLA further held that the Board had no discretion but to apply the Secretary's regulations. See *Lone Star Steel Co.*, 71 IBLA 92, 93 (1983); Appendix C, 23a. Thus LSS had exhausted its administrative remedies only to be told that no administrative remedy existed;

whether the FCLAA regulations were proper or not was not within the discretion of the administrative appellate process. *See* Appendix C, 13a-37a for the IBLA decisions.

The IBLA decisions constituted final agency action by the government; judicial review, not *de novo* review, was the only appeal open to LSS, even though the administrative appellate process had no discretion to review statutes or regulations. LSS's leases come under the jurisdiction of the U.S. District Court for the Eastern District of Oklahoma. LSS appealed on the grounds that Interior's readjustments were untimely; arbitrary and capricious agency action; in excess of statutory jurisdiction or authority or without observance of procedure required by statute; unlawful; unreasonable; a breach of contractual rights; an application of improper and invalid rulemaking; retroactive and unintended application of the statute; and an unconstitutional taking or impairment of property or contractual rights and a denial of due process.

The parties stipulated that the case be submitted to the District Court for final determination on stipulations of fact, affidavits, depositions taken, the leases and notices in question, the administrative record, and the parties' cross motions and briefs in support thereof for summary judgment. On June 30, 1986 the court issued its Opinion with Findings of Fact and Conclusions of Law finding all the issues in favor of defendants and against LSS. Judgment was entered on June 30, 1986 from which LSS appealed to the Court of Appeals for the Tenth Circuit. *See* Appendix B, 4a-12a for the Opinion and Judgment of the District Court.

The District Court in its findings and conclusions relied heavily on *Coastal States Energy Co. v. Watt*, 629 F.Supp. 9 (D. Utah 1985). Essentially the district court in *Coastal* held FCLAA applied on the 20th anniversary of a federal coal lease, that the option to readjust expressly provided for such an application, that application on the 20th anniversary was not retroactivity, and that Interior properly and timely applied FCLAA and its regulations to the leases.

The *FMC* and *Coastal* cases reached the Court of Appeals before LSS's case which was stayed pending decisions in *FMC* and *Coastal*. All issues presented in these cases were decided on April 9, 1987 in favor of the government, except the mandatory 8% underground rate appealed by *Coastal*. Rehearing with suggestion for rehearing en banc was denied on July 8, 1987. The Court held in *FMC* that the option to

readjust at 20 years was timely exercised by giving notice of acceptance where performance (proposing terms) followed reasonably thereafter. *Id.*, 500n.8, Appendix J, 174a(n.8). The Court of Appeals also held that the provision in MLLA, regulation and lease, "unless otherwise provided for by law", was express notice by Congress of unlimited reserved powers to rewrite at will wholesale lease changes no matter how drastic the terms. *FMC, supra,* 501, Appendix J, 175a, 175a (n.9), 176a, 170a(n.2), (n.3). The court further found that Congress exercised the unlimited reserved power of the MLLA proviso when it enacted FCLAA and that it automatically applied as a matter of law on the 20th anniversary of all leases issued before FCLAA's enactment.

How did *FMC* find BLM's timely promise to perform (notice) sufficient without timely performance? First, *FMC* analyzes 43 CFR §3451 requiring only notice by 20th anniversary and performance (terms) within two years thereafter. See *Id.*, 499n.7, Appendix J, 172a(n.7). Neither FMC nor Coastal argued that 43 CFR § 193.16 was the lawful regulation to apply, no 43 CFR § 3451. This question was not before the Court of Appeals, nor the district courts. Second, *FMC* finds options, as in MLLA § 7, "are usually exercised by giving notice of acceptance" timely with additional time thereafter in which "to perform the terms of the option." *Id.*, 500n.8, Appendix J, 174a(n.8). The reserved powers clause and its analysis in *FMC* is discussed below.

With these cases the law of the circuit, the Court of Appeals lifted the stay in LSS's case. LSS did not waive like arguments presented in *FMC* and *Coastal* and urged the court to reconsider them. LSS argued *FMC* and *Coastal* had not decided all issues presented in LSS's case, such as, Interior's use of an unbargained for regulation to exercise the option. Further, application of this FCLAA regulation before the current contract provision had expired was retroactive application of FCLAA, improper use of regulation as well as a breach of contract. Finally, LSS argued (1) the option contract was invalid as its provisions were selected and controlled by the option-holder as opposed to the common rule, the option-giver, and (2) applying the *FMC* analysis of Congress reserving unlimited power to change a contract at will even to the point of cancellation at 20 years (and then whenever) while binding a lessee made LSS's contracts illusory and invalid.

LSS emphasized to the Court of Appeals that the lease

provision governing the process of readjustment which the parties had contracted at lease issuance was 43 CFR § 193.16. That § 193.16 was expressly incorporated by the lease preamble and duplicated word-for-word at Section 3(d) of the leases. LSS noted to the Court that as this contract provision was in force until expiration on the 20th anniversary date and notice was given months before the anniversary, this regulation governed notice, not 43 CFR 3451. Indeed the very obligation to give notice derived from 43 CFR § 193.16 alone. Finally, LSS showed the Court of Appeals that under common rules of contract law, application of 43 CFR § 193.16 required not just timely notice to exercise the government's option but timely performance as well. Nothing had changed the MLLA and lease provisions that required timely performance. Clearly the FCLAA regulations *even if* construed to properly replace pre-FCLAA regulations could not excise an express statutory and contract provision to make timely promise of performance suffice for untimely and delayed performance.

In summary, the government did not apply 43 CFR § 193.16 to LSS's leases, did timely give notice but did not timely perform under 43 CFR §193.16, and did add conditions to the government's acceptance of the option by applying unbargained for regulations before the 20th anniversary of each of LSS's leases.

As for Congress' reserving powers in MLLA and exercising those reserved powers in FCLAA, LSS argued that the Court of Appeals' construction of the general contract provision,"unless otherwise provided by law", makes LSS' contracts illusory and conflicts with common rules of statutory construction and contract law as well as the the law of the circuit. The proviso appears in the governing statute, MLLA, pre-FCLAA regulations, and the pre-FCLAA leases. *See* Leases Section 3(d), Appendix G, 128a, 137a, 146a, 159a; 43 CFR § 193.16, Appendix M, 192a; MLLA § 7, Appendix I, 166a.

The broad construction of this clause does not square with the Court of Appeals' decision in *Rosebud, supra.* There the Court found that federal coal leases should be considered in a commercial context, applying typical contract law doctrines. *Id.*, 952, Appendix N, 197a. Similarly, the Court in construing an oil and gas lease issued under the MLLA, "used the typical contract law doctrines applicable to commercial

contracts." *United States v. Essley*, 284 F.2d 518 (10th Cir. 1960). Finally, the Tenth Circuit stated in *Harvey v. Udall*, that the purpose of MLLA is to promote orderly development of publicly owned lands of the United States "through private enterprise." 384 F.2d 883 (10th Cir. 1967).

The broad construction of this clause does not square with these typical contract law doctrines which the Court of Appeals finds applicable to the leases. Such contract law doctrines require that the provision be construed narrowly to avoid an illusory contract with the lessee unalterably bound to its terms, but the government free to change them at will on the 20th anniversary, even to the point of canceling the leases. *See* 1 Corbin, *Contracts* § 145 (1963). Further, where the clause is authority for applying new regulations before the current contract terms expire, to the extent that the new regulation conflicts with specific and current terms, the regulation violates the common rule that specific provisions control over more general ones. *See* 3 Corbin, *Contracts* § 547 (1960).

If the clause does express reserved powers, the expression is not a special reservation of Congress' right to amend. Congress always retains the power to amend a statute, but where Congress intends to reserve power to amend a statute and put the world on notice to that effect, Congress has used the same language since 1862 by using the words: "to repeal, alter, or amend." See *Bowen v. Public Agencies Opposed to Social Security Entrapment,* 106 S.Ct 2390, 437 U.S. 41, 91 L.Ed. 2d 35 (1986) at 437 U.S. 41. Further were the clause to be construed as a reservation of Congress' right to amend, the leases could hardly be considered contracts at all, much less a question of being valid or not.

The language used in the clause does not support a broad construction. The phrase is general, not specific. The clause does not specify aspects of the lease, much less which general contract doctrines applicable to the leases, may be affected. Further the clause is found in numerous statutes, including the Judiciary Act of 1891, 28 U.S.C. § 225. Such a common, non-specifying clause, which has demonstrated no special reservation of powers in other statutes, would hardly put a potential lessee on notice to a special reservation of powers and the potential that the government would be free to do as it willed at the end of twenty years and the lessee unalterably bound thereafter. In fact, Sutherland, states:

> The phrases "hereinafter referred to," "the said," and "the aforesaid," "unless otherwise provided by law," and similar expressions add little to understanding, usually are meaningless, and are never necessary.

1A *Sutherland Statutory Construction*. § 21.05 (1968-1972).

The legislative history of MLLA conflicts with a broad construction of this clause. As the history is extensive, only citations to reports and the Congressional Record are possible here.[10] Rep. Ferris, sponsor of the MLLA and chairman of the House Public Lands Committee, stated before the Congress setting as a committee of the whole the purpose of the act:

> "[S]o men may proceed in an orderly manner under a contract, so that men may know what their rights are and not have them swept away. . . ."

58 *Cong. Rec.* 7511 (1919).

Congress' intent in 1920 to convey vested contract and property rights does not square with *FMC*'s broad construction of reserved powers in MLLA § 7 to sweep away those rights. Even the reserved powers doctrine as expressed by "to repeal, alter, or amend", is limited by the Due Process Clause and standards of reasonableness. See *Shields v. Ohio*, 95 U.S. 319, 324 (1877) and *Sinking Fund Cases*, 99 U.S. 700, 718 (1879).

In spite of these facts emphasized in oral argument before the Court of Appeals on November 17, 1988, the court found no distinction and an order affirming the District Court's judgment issued on November 23, 1988. LSS petitioned for rehearing with suggestion for rehearing en banc which was denied on February 17, 1989. *See* Appendix A, 1a-2a for the Judgment of the Court of Appeals.

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[10] H.R. Rep. No. 668, 63rd Cong., 2nd Sess. (1914); H.R. Rep. No. 17, Part 1, Part 2 (Minority Views), 64th Cong., 1st Sess. (1916) ; 51 *Cong. Rec.* 14945 (1914) (Rep. Thomson); 51 *Cong. Rec.* 14954 (1914)(Rep. Mondell); 51 *Cong. Rec.* 15190 (1914) (H.B. 16136 identical to MLLA § 7); 51 *Cong. Rec.* 15277 (1914) (Mondell Amendment); 51 *Cong. Rec.* 15278 (1914)(Rep. Graham); 53 *Cong. Rec.* 1045 (1916)(Rep. Mondell); 58 *Cong. Rec.* 4112 (1919)(Sen. Smoot); 58 *Cong. Rec.* 7511 *et seq.* (1919); 58 *Cong. Rec.* 7643 (1919) (Rep. Anderson).

In the final analysis, the questions are: 1. Are LSS's original leases and all federal coal leases like them, valid contracts? 2. Has the government's rewriting of these contracts made them illusory or otherwise invalid?

REASONS FOR GRANTING THE WRIT

This Case Has National Implications and Tenth Circuit Rulings Effectively Foreclose Future Cases

At stake is the very essence of a contract between the United States and a citizen. Americans must know the nature of the contractual relationship between the United States and its people. They must learn if the courts are inclined to create a special commercial law for the government's benefit or are simply confused or misled by the complex of statutes, regulations, decisions, and orders in the application of the common rules of contract law to typical commercial transactions. Or we all must learn that the contracts presented by this case, *FMC* and *Coastal* have been correctly construed at least for a period of time in our nation's history. But such a construction must answer the questions presented here and be grounded in common rules of contract law.

At stake is the nature of the commercial relationship between the United States as owner of a third of the Nation's land and those Americans who have developed it. This includes all those who have or will develop the Nation's natural resources. The Court of Appeals for the Tenth Circuit's decisions in coal leasing impacts all natural resource leasing, many contracts with identical or similar terms, for example, sodium, potash, gold, silver, quicksilver, and oil and gas.[11]

At stake are the contract rights of more than 400 coal leases covering some 12 billion tons of coal. Approximately 90% of these leases are located within the jurisdiction of the Tenth Cir-

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[11] *See* MLLA §24 (sodium leases) ; MLLA § 17 (oil and gas leases) ; Act of February 25, 1927 § 3 (potash leases) ; Act of June 8, 1926 § 1 (gold, silver, or quicksilver), all have the clause "unless otherwise provided by law at the expiration of such periods" which as noted above under "Statement of the Case" the Court of Appeals held to be a reservation of unlimited power by Congress to make changes.

See also, Public Land Law Review Commission, *One Third of the Nation's Land, A Report to the President and to the Congress* 22-23 (1970) .

cuit; thus all of these leases are impacted by the Tenth Circuit's decision.[12] Thus an intolerable conflict between the nation's lower courts is highly unlikely and review and guidance by the Supreme Court necessitated. As in *Andrus v. Udall*, 446 U.S. 500, 506 (1980), the Court granted certiorari to resolve "a significant issue regarding the disposition of vast amounts of public lands."

At stake are hundreds of millions of dollars. Lone Star Steel Company will not pretend that money is not a consideration. After all, Lone Star is a business. And as a business has made a business decision that the leases as rewritten by the government are not a sound business proposition. The Court of Appeals has found such rewritten contracts drastic, but a matter for Congress. Lone Star believes that a contract must be within reason to operate. Those elements included in a contract that make it "within reason" is the contracting party's right to rely on the terms with some certainty.

At stake are millions of dollars that will be taken out of the pockets of the American citizen. The increased royalty cost that the FCLAA imposed on all federal coal leases must be paid by someone. If not the coal companies, then to those consumers with whom they have contracts and can pass on the added costs. Many of these consumers are utilities, who in turn will pass on the cost to the public. Thus the public in those states where federal coal is burned for utilities, will pay the royalty. This affects the public in most of the West and in such states as Missouri, Oklahoma, Texas, Minnesota, Wisconsin and Illinois. LSS, however, unlike these consumers has long term steel contracts, not fuel contracts, with no pass through provision, and it will have to absorb the increase not just in royalty but all lease costs.

LSS will not pretend to this Court that an avalanche of cases will follow this case. Likely, should the Court deny certiorari, the average business man will take his lumps and swallow his losses or go out of business and hope to try something else. In any event the mineral resources of the nation would probably have not been developed had Congress in 1920 in-

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12 United States Congress of Technology Assessment Special Report, "Potential Effects of Section 3 of the Federal Coal Leasing Amendments Act of 1976," at 43 (March 1986) ; Telephone interview with the Department of the Interior's Division of Solid Minerals (May 15, 1989) .

tended the result that has been read into the MLLA by the Court of Appeals. The decisions by the Tenth Circuit effectively forecloses further "percolation" as this circuit has or will decide almost all of the cases raising the issues.

Conflict with Supreme Court Precedent

Pursuant to Supreme Court Rule 17 this case calls for a grant of a writ of certiorari because the Court of Appeals' decision conflicts with applicable decisions of the Supreme Court. The Supreme Court denied the petition for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit in *FMC Wyoming Corporation v. Donald P. Hodel, Secretary of the Interior, et al.*, No.87-560 (January 25, 1988). FMC asked this Court to expand its scope in that the issues raised "are of first impression" in that the Court "has never considered the extent to which federal mineral leases create property rights" nor considered the "limits of congressional authority to alter existing mineral leases under its reserved powers." *Id.*, Petition, 11-12. FMC challenged the application of all FCLAA terms as basically a violation of the Fifth Amendment Takings Clause.

In contrast LSS does not petition this Court to expand its scope. It petitions this Court to examine this case based on the common rules of contract law and well-established precedent of this Court. Thus LSS focuses on Interior's premature application of FCLAA to the option as a violation of common rules of option contracts. LSS asks if its original contracts were valid and if the Court of Appeals construction of MLLA makes LSS' contracts with the government illusory.

This case presents a vertical conflict. The conflict is not an explicit refusal to follow Supreme Court precedent, or a holding that Supreme Court precedent is no longer authoritative, or a decision attempting to distinguish Supreme Court precedent, but rather decisions failing to discuss controlling cardinal rules of law and Supreme Court precedent. As stated above, this failure derives either from an inclination to create a special commercial law for the government or from confusion or being misled by the complex of statutes, regulations, decisions, and orders in attempting to apply the common rules of contract law. In short, the Court of Appeals was simply wrong.

1. *Leases Issued Under MLLA Are Valid Contracts Governed by the Common Rules of Contract Law*

This Court has already decided that leases issued under the MLLA are valid contracts conveying valuable contractual and property rights. In *National Railroad Passenger Corporation v. Atchison, Topeka & Santa Fe Railway Co., et al.* this Court held that if the purpose of the statute is to bind the government, it creates a contract, not merely a regulatory policy. 470 U.S. 451, 465-466 (1985). This Court has held that the purpose of MLLA was to bind the government to a lease contract as opposed to complete alienation of the public lands. *Pan American Petroleum & Transp. Co. v. United States*, 273 U.S. 456 (1927). In turn the leases conveyed valuable contractual and property rights vested by the MLLA. *Lynch v. Alworth-Stephens Co.*, 267 U.S. 364 (1925); *Boesche v. Udall,* 373 U.S. 472 (1963); *Udall v. Tallman* , 380 U.S. 1, *reh den.* (1965).

As valid contracts, the government "comes down from its position of sovereignty and enters the domain of commerce" and "submits itself to the same laws that govern individuals there." *Cooke v. United States*, 91 U.S. 389, 398 (1875). The Tenth Circuit too has found the MLLA leases valid contracts subject to the common rules governing commercial transactions. *Rosebud, supra*, 667 F.2d at 951, Appendix N, 197a.

The critical issue therefore is not whether the MLLA leases are valid contracts, but if the contracts are valid under the Tenth Circuit's construction of them. Thus the Questions Presented concern the government's exercise of the option contract in the leases and the finding and exercise of reserved powers to apply FCLAA.

First let us consider the Tenth Circuit's construction of the government's exercise of the option contract as timely and proper. LSS has already shown in the "Statement of the Case" that the Court of Appeals failed to distinguish LSS's case from *FMC*. The leases incorporated the MLLA and the regulations "in force" at the date of the leases, with the regulation at 43 CFR § 193.16 duplicated word-for-word in Section 3(d) of the leases. By the terms of the lease, drafted by the government, the mode of acceptance of the option was performance with the regulation requiring also notice or promise of performance. The notice did not dispense with the

requirement of performance. Both notice and performance were to be timely before or on the 20th anniversary of the lease. This Court decided long ago that time is always of essence in an option contract. *Waterman v. Banks*, 144 U.S. 394 (1891). Further where the mode of acceptance requires notice and performance, giving notice alone will not suffice. *Stitt v. Huidekopers*, 84 U.S. (17 Wall) 384 (1873).

The specific terms of Section 3(d) of the leases and 43 CFR § 193.16 (1954) state:

> The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after the receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period.

This provision requires performance, not mere notice of intent to perform by expiration of the 20-year period. While the language of the provision appears to require only notice, it requires, in fact, that that notice give proposed terms (the mode of acceptance is that Interior perform by giving the proposed terms). This is true, as a lessee who received only a notice with no terms would not be able to object to the terms received.

The government, however, applied the FCLAA regulation, not the above cited provision, which required only notice without proposed terms. The leases, MLLA, and regulation all have the provision, "unless otherwise provided by law at the expiration of such periods." Thus until expiration of the 20 years, the contract consisted only of the MLLA, 43 CFR § 193.16, and the lease provisions. But the FCLAA regulation was applied before the expiration of 20 years to change the option. This is proper only if Congress intended FCLAA to apply retroactively, which the Tenth Circuit has already determined: "There is no suggestion whatever that the

amendment [FCLAA] was to be retroactive and the contrary is indicated." *Rosebud, supra*, 952, Appendix N, 199a-200a.

Further the common rules of option contracts prohibit the government from changing the provisions for acceptance. The option-giver lessee who by an option contract makes an irrevocable offer to the option-holder government must have complete control of the option provisions. This means that the lessee alone may waive any requirements of the option. As the Second Circuit has noted, [I]t is hornbook law that a condition precedent in favor of one of the parties may be waived by that party." *Walter E. Heller and Co. v. American Flyers Airline Corp.*, 459 F.2d 896 (2nd Cir. 1972). Here, contrary to hornbook law, the government-lessor waived a condition precedent in favor of the lessee. *See also* A. Corbin, 1A *Corbin on Contracts* § 264 at 525.

This Court has repeatedly held that statutes will not be construed to impair existing contract and property rights absent express language compelling that result. *See, e.g., Farmers and Mechanics Savings Bank of Minneapolis v. Minnesota*, 232 U.S. 516, 528 (1914). The Tenth Circuit's decision to affirm the government's application of FCLAA regulations to the option contract thereby impairing lessee's rights squarely conflicts with settled Supreme Court precedent. As LSS emphasized the the facts of impairment to the Tenth Circuit, the Court of Appeals has failed to discuss controlling precedent and cardinal rules of contract law.

2. *The Court of Appeals Construction of the Leases Makes The Leases Illusory Contracts*

The Tenth Circuit's construction of the provision, "unless otherwise provided by law" allows the government to change all terms of the contract. The government did cancel terms and, under this interpretation, presumably could cancel all terms thereby providing an escape clause for the government while binding the lessee. This Court has held that the government cannot reserve to itself a right of non-performance without destroying the contract. *Willard, Sutherland & Co. v. United States*, 262 U.S. 489 (1923). Further, the construction makes the contract illusory. It does not purport to effect any limitation upon the promisor's future freedom of choice. A. Corbin, 1 *Corbin on Contracts* § 145 (1963). As Congress

intended by the enactment of MLLA to enter into a binding contract with lessees and the Court of Appeals makes that contract illusory, an alternate construction is required. The interpretation that saves the contract is favored. *Id.*; *Restatement (Second) of Contracts* § 77 (1979).

The Tenth Circuit's construction of the clause, "unless otherwise provided for by law," would hardly put a person on notice that he was signing an open-ended contract. This is so as the clause has been the subject of more than one interpretation. Although subsequently reversed by the Tenth Circuit on its interpretation of the clause, the district court in *Coastal, supra*, 9 held that the clause "does not incorporate statutes in effect at the time of readjustment" but only "modifies the right [of the Secretary] to readjust." This shows the ambiguity of the clause. This ambiguity requires the application of *United States v. Seckinger*, 397 U.S. 203, 210 (1970) and the *contra proferentem* rule. This rule is the general maxim to construe most strongly any ambiguity against the drafter including the United States. The rule is particularly applicable where the government drafts the contract and no opportunity exists to negotiate terms. 3 *Corbin on Contracts* § 559 (1960); *Larionoff v. United States*, 533 F.2d 1167, 1178 (D.C. Cir. 1976), *aff'd*, 431 U.S. 864 (1977). Where, as here, more than one reasonable interpretation of a contract provision exists, the rule is to adopt the interpretation favoring the non-drafting party.

As stated above, where Congress has given special notice of its right to amend, Congress has done so with the same phrase since 1862. *Sinking Fund Cases, supra*, 720. Further where the special notice is meant to apply to a specific Act of Congress, Congress specifies its right to amend "this Act". *National R. Passenger Corp, supra*, 468 last ¶ n.22. The commonly used clause, "unless otherwise provided by law," has never been construed by a court as a special reservation of power. This Court in *U.S. v. Dalcour*, 203 U.S. 408 (1906) did not find the same language in the Judiciary Act of 1891 a special reservation of powers by Congress but a truism, meaning that unless a specific statute stated differently that the Circuit Court of Appeals was proper to review final decisions of the district courts.

Even if, this Court were to agree with the Court of Appeals' broad construction of the MLLA clause, that construction cannot be unlimited. As this Court has held, "[C]ontracts are

property and create vested rights". *Lynch v. United States*, 292 U.S. 571 (1934). As vested rights, a lease need not be listed in the FCLAA grandfather clause or included within a "valid existing rights" clause because "such a right would require no exception to insure its preservation." *Stockley v. United States*, 260 U.S. 532, 544 (1923). Even the reserved powers doctrine expressed by "to repeal, alter, or amend," is limited by the Due Process Clause and standards of reasonableness. *See Sinking Fund Cases, supra*, 718; *Shields v. Ohio, supra*, 324.

3. *Congress Did Not Exercise in FCLAA Any Reserved Power in MLLA to Rewrite MLLA Leases.*

Congress did not expressly provide that FCLAA automatically apply upon readjustment of leases issued under MLLA before 1976. The Tenth Circuit, however, held that FCLAA must be applied to pre-FCLAA leases because "we find nothing in our reading of FCLAA (1976), or in its legislative history, to indicate that FCLAA (1976) was *not* to be applied to pre-FCLAA coal leases on their post-FCLAA anniversary date." *FMC, supra*, 501, Appendix, 176a.[emphasis added]. The Court of Appeals admitted that this interpretation results in a "drastic increase in royalty rate," but asserted that "such is a matter for Congress." *Id.* If the matter is for Congress to determine, why then did the Tenth Circuit make such a construction when it admits in the same sentence there is no evidence of Congressional intent.

Clearly the Court of Appeals applied the wrong rule of construction. To find that Congress exercised the supposed "reserved powers" in MLLA to alter unilaterally contract rights, the court should have required evidence of specific Congressional intent to do so. Silence should not be sufficient to trigger such a provision drastically altering contract rights between the United States and private parties. *See Perry v. United States*, 294 U.S. 330, 350-352 (1934)(potential impairment of contracts between the United States and private parties should be subject to heightened scrutiny). In other words, a law, FCLAA, does not "otherwise provide", referring to the MLLA clause, so as to rewrite coal leases on readjustment unless it expressly requires that its provisions govern readjustment of existing leases. Finally, the Court of Appeals to hold this construction, had to base it on another

construction that the MLLA clause, "unless otherwise provided by law", was one of unlimited reserved powers. A construction based upon a construction, neither express, is hardly in accord with the common rules of statutory construction.

CONCLUSION

The decision by the Court of Appeals for the Tenth Circuit conflicts with United States Supreme Court precedent and questions the integrity of all government leases. It leaves the government free to rewrite or cancel at will all federal leases and bind the lessee to the result. This drastic change is the result of the Tenth Circuit's broad construction of a reserved powers clause in MLLA which the court held was exercised by FCLAA, a statute silent as to such an application and without evidence of Congressional intent that it be so exercised. The Tenth Circuit further ignored common rules of contract law that such an interpretation makes the federal leases illusory. The Tenth Circuit also held that Interior timely and properly applied FCLAA in spite of the facts that show FCLAA was applied retroactively to the option contract and that common rules of contract law were violated. For these reasons, LSS respectfully submits that this petition for certiorari should be granted.

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May 1989

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 86-2146
(D.C. No. 84-583-C)
(E.D. Oklahoma)

LONE STAR STEEL COMPANY,
Plaintiff-Appellant,

v.

WILLIAM CLARK, Secretary of the United States Department of the Interior, ROBERT F. BURFORD, Director of the Bureau of Land Management, United States Department of the Interior; CHARLES W. LUSCHER, Director, New Mexico State Office of the Bureau of Land Management, United States Department of the Interior; and the UNITED STATES DEPARTMENT OF THE INTERIOR,
Defendants-Appellees.

ORDER AND JUDGMENT
November 23, 1988

Before MOORE, ANDERSON and EBEL, Circuit Judges.
JOHN P. MOORE, Circuit Judge.

In this case, appellant questions the propriety of the adjustment of certain coal leases made by the Secretary of the Interior. Recognizing the issues raised here have already been decided by this court in *FMC Wyoming Corp. v. Hodel,* 816 F.2d 496 (10th Cir. 1987), *cert. denied,* 108 S.Ct. 772 (1988), and *Coastal States Energy Co. v. Hodel,* 816 F.2d 502 (10th Cir. 1987), appellant asks us to distinguish this matter. Finding no basis for distinction, we **AFFIRM** the judgment of the district court.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

February 17, 1989

No. 86-2146
(D.C. No. 84-583-C)
(E.D. Oklahoma)

Before Honorable Monroe G. McKay, Honorable James K. Logan, Honorable Stephanie K. Seymour, Honorable John P. Moore, Honorable Stephen H. Anderson, Honorable Deanell R. Tacha, Honorable Bobby R. Baldock, Honorable Wade Brorby and Honorable David M. Ebel, Circuit Judges.

LONE STAR STEEL COMPANY,
Plaintiff-Appellant,

v.

WILLIAM CLARK, Secretary of the United States Department of the Interior, ROBERT F. BURFORD, Director of the Bureau of Land Management, United States Department of the Interior; CHARLES W. LUSCHER, Director, New Mexico State Office of the Bureau of Land Management, United States Department of the Interior; and the UNITED STATES DEPARTMENT OF THE INTERIOR,
Defendants-Appellees.

This matter comes on for consideration of appellant's petition for rehearing and suggestion for rehearing en banc in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision sought to be reheard.

In accordance with Rule 35(b) of the Federal Rules of Appellate Procedure, the petition for rehearing and suggestion for rehearing en banc were transmitted to all the judges of the court in regular active service. No member of the hearing panel and no judge in regular service on the court having suggested that the court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for

rehearing en banc is denied.

Judge Holloway did not participate in consideration or disposition of the suggestion for rehearing en banc.

APPENDIX B

IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

No. 84-583-C

LONE STAR STEEL COMPANY,
Plaintiff,

v.

WILLIAM CLARK, Secretary of the United States Department of the Interior, *et al.*,
Defendants.

JUDGMENT

Pursuant to the court's Findings of Fact and Conclusions of Law filed herein, the court finds all the issues in favor of the defendants and against the plaintiff.

IT IS SO ORDERED this 30th day of June, 1986.

/s/ Frank H. Seay
Frank H. Seay
United States District Judge

IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

No. 84-583-C

LONE STAR STEEL COMPANY,
Plaintiff,

v.

WILLIAM CLARK, Secretary of the United States Department of the Interior, *et al.*,
Defendants.

OPINION

This is an action for judicial review of a final determination by the Interior Board of Land Appeals (IBLA) of the defendant United States Department of the Interior (DOI). The challenged determination upheld a decision by the defendant Bureau of Land Management (BLM) readjusting the terms of several coal leases issued to plaintiff. Plaintiff also challenges provisions of the Federal Coal Lease Amendment of 1976 (FCLAA) and regulations promulgated thereunder.

From June 1959 to May 1962, the defendant BLM, an agency of the Department of the Interior, through the then Land Office, Santa Fe, New Mexico, issued five coal leases pursuant to the Mineral Leasing Act of 1920 for federal coal deposits in Oklahoma to plaintiff. At the time the leases were entered into, each lease was subject to readjustment of terms and conditions upon expiration of a twenty-year term. At that time readjustment was authorized by the lease at Section 3(d), by regulation at 43 CFR 193.16 (Rev. 1954), and by statute at 30 U.S.C. §207 in the Federal Coal Leasing Amendments Act. Prior to the anniversary of each lease defendant BLM sent to plaintiff a notice without terms or conditions that lease terms and conditions would be readjusted. In each case plaintiff filed timely objections to the readjusted terms. In five separate decisions, without a hearing, the defendant BLM

overruled plaintiff's objections to the readjustment and on appeal in a final agency determination the IBLA affirmed those decisions. Plaintiff challenges here the IBLA decisions.

Plaintiff maintains that the readjustment was: (1) Untimely and therefore barred; (2) Arbitrary and capricious and an abuse of discretion; (3) Unconstitutional taking of contractual rights and a denial of due process; (4) A breach of contracts; (5) Improper retroactive application of the 1976 FCLAA; (6) Governed by invalid and improperly applied regulations; (7) Ineffective and improper until defendant BLM complies with 30 U.S.C. §184; and (8) Incorporate improperly requirements of Executive Order No. 11246. Defendants maintain that the readjustment was timely, proper, not an unconstitutional taking nor a breach of contract rights and that FCLAA and the regulations promulgated thereunder were validly applied to plaintiff, and that defendants properly complied with 30 U.S.C. §184 and Executive Order 11246.

On February 21, 1986, all parties stipulated that this case may be submitted to the court for final determination upon their stipulations of facts, affidavits from miners regarding the reasonableness of the 12.5% royalty, affidavit concerning a reasonable royalty based upon indexing of the inflation rate, depositions taken and to be taken on December 16, 1985, the leases and notices in question, and the administrative record in this matter. On that same date, all parties made oral arguments.

Based upon the admission of all the stipulated facts, exhibits, depositions, and administrative record, the court makes the following Findings of Fact and Conclusions of Law, pursuant to Rule 52, Federal Rules of Civil Procedure.

FINDINGS OF FACT

All of the parties stipulate, and the court finds, as follows:

1. Plaintiff, lessee, and the United States through defendant BLM, an agency of the DOI, lessor, entered into the following five leases all pursuant to the Mineral Lands Leasing Act of

1920 (MLLA), as amended:

Lease	Date of Issue
NM 059992 OK	June 1, 1959
NM 050405 OK	December 1, 1959
NM 050406 OK	December 1, 1959
NM 059996 OK	April 1, 1960
BLM-C-018820 OK	May 1, 1962

These subject leases cover certain lands and natural resources in LeFlore, Pittsburg, Haskell, and Latimer Counties, Oklahoma, which lands and natural resources are located within the boundaries of the Eastern District of Oklahoma. Defendants Clark, Burford, and Luscher are officers or employees of the United States acting in their official capacity.

2. The MLLA provided at the time of issuance:

> Leases shall be for indeterminate periods upon condition. . . that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine . . . 30 U.S.C. §207 (1970).

3. The leases provided at the time of issuance:

> The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of twenty years from the date hereof and thereafter at the end of each succeeding twenty-year period . . .
> Lease Section 3(d)

4. The regulations of the defendant DOI at the time of issuance provided:

> The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease . . . (and that) lessee will be notified of the proposed readjustment of terms or notified

> that no readjustment is to be made . . . . whenever feasible, before the expiration of each twenty-year period.
> 43 C.F.R. §193.16 (Rev. 1954).

5. The leases were issued pursuant and subject to the MLLA, as amended, and "to all reasonable regulations of the Secretary of the Interior now in force . . . " Leases ¶2.

6. On August 4, 1976, the Federal Coal Leasing Amendments Act (FCLAA) became effective and amended some provisions of the MLLA. The FCLAA provided for fixed term leases:

> (O)f twenty years and for so long thereafter as coal is produced annually in commercial quantities . . . (and) shall require payment of a royalty . . . of not less than 12.5 per centum of the value of the coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations . . . (and) shall include such other terms and conditions as the Secretary shall determine . . . (and) will be subject to readjustment at the end of its primary terms of twenty years and and the end of each ten-year period thereafter if the lease is extended.
> 30 U.S.C. §207(a)(1976).

7. On July 19, 1979, defendants adopted regulations at 43 C.F.R. §3451.1 providing for a 12.5% of value per ton for coal removed by surface-mining methods.

8. On January 25, 1977, defendants adopted regulations providing for an 8% of value per ton for coal removed by underground mining.

9. Defendant BLM regulations provide:

> The authorized officer shall . . . notify the lessee whether any readjustment of terms will be made . . . (T)he failure to so notify the lessee (prior to the end of the current or initial twenty-year period) shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

43 C.F.R. §3451.1(d)(1982)

10. Prior to FCLAA, defendant DOI's normal practice was to evaluate individually leases upon readjustment, and to tailor readjusted terms on a case-by-case basis. After the passage of FCLAA, defendant DOI adopted instead a blanket readjustment policy, whereby all surface mining leases, issued before August 4, 1976, would be readjusted to a minimum 12.5% royalty.

11. The leases were subject to notice for readjustment on or before the dates indicated:

Lease	Anniversary Date
NM 059992 OK	06/01/79
NM 050405 OK	12/01/79
NM 050406 OK	12/01/79
NM 059996 OK	04/01/80
BLM-C-018820 OK	05/01/82

12. Regulations of the defendant DOI in effect on the anniversary dates tracked the language of the leases and the MLLA, as amended by FCLAA, and permitted the readjustment of lease terms "at the end of" the twenty-year period succeeding the date of lease issuance. 43 C.F.R. §3451.1 (1982). The regulations further required that the lessee be notified "prior to the expiration of the current or initial twenty-year period" whether any readjustment of terms and conditions would be made "prior to the expiration of the initial twenty-year period."

13. Plaintiff received notice, dated as indicated below, from the defendant BLM as to its leases:

Lease	Notice of Intent to Readjust	Anniversary Date	Proposed Terms
NM 059992 OK	02/09/79	06/01/79	01/16/81
NM 050405 OK	02/09/79	12/01/79	01/16/81
NM 050406 OK	02/09/79	12/01/79	01/16/81
NM 059996 OK	11/19/79	04/01/80	10/06/81
BLM-C-018820 OK	10/30/81	05/01/82	03/18/82

The Notice of Intent to Readjust contained no terms or conditions and was received by plaintiff prior to the anniversary date for each lease. Except for lease BLM-C-018820 OK, the proposed terms and conditions were not received by plaintiff until after the anniversary date.

14. A sixty-day period followed during which the proposed readjusted terms and conditions could be objected to, or the lease relinquished. The negotiation period, which leads to a completed readjustment, extended beyond the end of the initial twenty-year lease period. Plaintiff timely filed objections to the readjusted lease terms. Defendant BLM rejected plaintiff's objections, finalized the readjusted terms, which included a royalty rate of 12.5%, and completed the readjustment process, by decisions after the readjustment anniversary due dates.

15. Plaintiff appealed the defendant BLM's decisions to the IBLA. No hearing was held on the matter. The IBLA issued decisions upholding the BLM's decisions on the basis that (1) defendant BLM's practice of reviewing objections to proposed terms, finalizing lease terms, rendering a final decision, and completing the readjustment process, after the anniversary date of the leases or, that is, after the end of the initial twenty-year lease period is consistent with applicable law, which requires readjustment "at the end of" that period, and (2) that a minimum 12.5% royalty rate, established by FCLAA, is mandatory upon readjustment of leases issued prior to the 1976 FCLAA,

16. The FCLAA minimum 12.5% royalty rate imposed on the leases by the terms of the readjustments of the leases, constitutes an increase in royalty, as the previous lease terms provided for 15 cents per ton royalty. Under the new terms the royalty would be 12.5% of the value of coal mined (value would be $49.50 per ton), 12.5% of this would be $6.18 per ton,.

17. The Department of Justice has informed defendant DOI of its policy for implementing 30 U.S.C. §184. A statement is attached as Exhibit A in defendant's brief in support of its motion to dismiss. The defendant DOI routinely provides the required information as requested by the Justice Department; no

exception was made in this case. (See defendant's Exhibit B, in defendant's brief in support of its motion to dismiss and affidavit of Theresa Romero).

18. The IBLA concluded, 65 IBLA 147, 151 (1982), and the court finds, that the regulations challenged, contained in 41 C.F.R. Part 60-1, are intended to promote and insure equal opportunity for all persons working with government contracts. The regulations require all such "government contracts" to include certain equal opportunity and certification requirements. These provisions have accordingly been incorporated in paragraphs 15 and 16 of the leases.

CONCLUSIONS OF LAW

1. This court has jurisdiction pursuant to 28 U.S.C. §§1331, 1361, and 2201, and venue pursuant to 28 U.S.C. 1391(e).
2. Defendants' regulations for readjustment of these coal leases were proper and valid, and the terms, conditions, and regulations incorporated in the readjusted leases were proper, valid, and binding on the parties. *Coastal States Energy Co. v. Watt*, 629 F. Supp. 9 (D. Utah 1985).

3. Defendants gave timely notice for readjustment of these leases and the terms and conditions of the readjustment were timely made. *Coastal States Energy Co. v. Watt,* supra.

4. Defendants' readjustment of these leases was not an unconstitutional taking of property or contractual rights or a denial of due process. *Coastal States Energy Co. v. Watt,* supra.

5. The readjustment of these leases did not constitute a breach by defendants of the original leases. *Coastal States Energy Co. v. Watt,* supra.

6. This court may set aside defendants' agency action if its findings and conclusions are arbitrary, capricious, an abuse of discretion, not otherwise in accord with law, or contrary to constitutional rights, or in excess of statutory jurisdiction or

authority, or without observance of procedures required by statute. 5 U.S.C. §706(2)(A).

7. The findings and conclusions of the defendants' agency action are not arbitrary, capricious, an abuse of discretion; they are in accord with the law; they are not contrary to constitutional rights, in excess of statutory jurisdiction or authority, or without observance of procedure required by statute. *Coastal States Energy Co. v. Watt,* supra.

Accordingly, plaintiff fails to sustain its burden of proof, and the court finds all the issues in favor of the defendants and against the plaintiff.

IT IS ALL SO ORDERED this 30th day of June, 1986.

/s/ Frank H. Seay
Frank H. Seay
United States District Judge

APPENDIX C

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

[Logo]

LONE STAR STEEL CO.

IBLA 82-164
82-618

Decided June 29, 1982

Consolidated appeals from the several decisions of the New Mexico State Office of the Bureau of Land Management imposing certain readjusted terms and conditions on coal leases NM 050405 (OK), NM 050406 (OK), NM 059992 (OK), and NM 059996 (OK).

Affirmed.

1. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

   Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where each of the readjusted provisions objected to by the lessee is mandated by statute and/or regulation.

APPEARANCES: William A. Osborn, Esq., Lone Star, Texas, for appellant; Robert J. Uram, Esq., Office of the Regional Solicitor, Santa Fe, New Mexico, Departmental Counsel.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The appeals above captioned are consolidated upon the motion of Departmental counsel, with the acquiescence of

appellant.

Three of the subject coal leases were issued in 1959 and the other (NM 059996 (OK)) was issued in 1960. In each case the New Mexico State Office of the Bureau of Land Management (BLM) notified the lessee, Lone Star Steel Company, in advance of the 20th anniversary of the lease that there would be a readjustment of the lease terms and conditions pursuant to the provisions of [65 IBLA 147] 43 CFR 3451. *Cf. Kaiser Steel Corp., et al.*, 63 IBLA 363 (1982). Subsequently, BLM notified the lessee of the specific alterations in the lease terms and conditions in consequence of the readjustments. The notices of readjustment provided that the lessee would be allowed 60 days within which either to file objections to any of the readjusted terms it deemed unacceptable, or to relinquish the lease.

In each instance, the company filed timely, detailed objections to the inclusion of certain sections of the readjusted leases.

By its decisions dated February 17, 1982 (re NM-059996 (OK)), and October 26, 1981 (re NM 050405 (OK), NM 050406 (OK), and NM 059992 (OK)), BLM held that the readjusted lease provisions to which the lessee had objected were properly imposed, stating as follows:

> Lone Star Steel Company has filed objections to the following terms and conditions:
>
> Section 3. Diligence
> Section 11. Logical Mining Units (LMU)
> Section 6. Production Royalty
> Section 15. Equal Opportunity Clause
> Section 16. Certification of Nonsegregated Facilities
> Section 17. Employment Practices
>
> We respond first to the objections as to the diligence requirements and the provision on logical mining units concerning the exhaustion of the leased reserves within 40 years in order to comply with such diligence. On May 26,

1976 and December 29, 1976, the Department of the Interior adopted diligence development and continued operations regulations. In the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Congress adopted diligent development and continued operations standards for new leases. The Secretary in his June 1979 decision on the Federal coal management program directed enforcement of the Department's pre-FCLAA diligence requirements published July 19, 1979. Accordingly, all leases readjusted subsequent to the effective date of the 1976 regulations must be made subject to the diligence requirements under 43 CFR 3475 by virtue of the readjusted terms.

Lessee's attention is invited to the regulations under 43 CFR 3475.4(b) which provide that for coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased under certain conditions as set out therein.

Regarding the production royalty, the regulations contained in 43 CFR 3451.1(a)(2) require that any lease subject to readjustment must be readjusted to conform to the minimum royalty as [65 IBLA 148] prescribed in 43 CFR 3473.3-2. That minimum royalty has been determined to be not less than 12.5 percent of the value of the coal removed from a surface mine and not less than 8 percent of the value of the coal removed from an underground mine. However, relief is provided in 43 CFR 3473.3-2(d)(1). This provisions allows the Secretary to reduce the royalty, but not advance royalty, whenever he determines it to be necessary to promote development or whenever a lease cannot be successfully operated under the terms provided therein. An application for such relief must be filed in triplicate with the District Mining Supervisor, Minerals Management Service, 6136 E. 32nd Avenue, Tulsa, Oklahoma 74135.

Sections 15 and 16 of the readjusted terms must be included in every lease in order to be in compliance with

Executive Order 11246 of September 24, 1965 and the regulations of the Department of Labor under Title 41, Chapter 60. Except as otherwise provided, we are required by 41 CFR 60-1.4 to include the equal opportunity clause contained in Section 202 of the order in each Government contract. Also, 41 CFR 60-1.8 requires that such contracts contain a certification of nonsegregated facilities.

Wherever the word "contractor" appears in the equal opportunity clause on Form 1140-2 attached to the readjusted lease, it is intended to mean the lessee and the lessee must comply with the provisions therein.

As defined in 41 CFR 60-1.3 a "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for use of real property or personal property, including lease arrangements. Accordingly, all standard Bureau of Land Management contract forms, including mineral and land use forms have been appropriately revised to include the equal opportunity clause and certification of nonsegregated facilities.

Section 17 of the readjusted leases was included under Sec. 2(1) in the original lease issued April 1, 1960, and it is required by Section 30 of the Act of February 25, 1920 (41 Stat. 449) as amended.

For the reasons stated above, the terms and conditions objected to by the lessee must remain as set out in the coal lease readjustment transmitted with our notice of October 6, 1981.

Lessee then appealed to this Board from those BLM decisions, contending generally that the regulation providing for objections and appeals is "an illusory right and meaningless gesture" if all the readjusted provisions are required by regulation and may not be altered, and, further, "that the regulations recognize that the law intends 'to encour-

age the greatest ultimate [65 IBLA 149] recovery of coal' (43 CFR § 3473.3-2(d)(1) for the benefit of national energy needs; and that, therefore, exceptions will be made among lessees upon equitable considerations."

We will observe first that the fact that some terms of readjusted leases are required by statute, regulation, or executive order, and are thus mandatory, does not render the opportunity for objection and appeal "an illusory right and [a] meaningless gesture." Not all conceivable terms of readjustment are so mandated. Appellant should understand that BLM and this Board, like the courts of the judicial branch, must apply those provisions imposed by law, and are without authority to waive or disregard legal obligations simply because an appellant utilizes an administrative appeals procedure to complain of them.

Appellant complains that adjusted lease sections 3 and 11 (concerning diligent development and logical mining units are unreasonable, unrealistic and arbitrary because it is not feasible for appellant to develop underground mines on all of its LMU's and operate them economically. It asserts, "The rules should employ equitable considerations and require that production be only from such LMU's from which the lessee can produce economically at a particular point in time." This argument, coupled with the long history of nonproduction of these leases, suggests that appellant has leased more Federal coal deposits than it can use. If so, perhaps considerations of public interest would require that either development and production be commenced on these leases within the designated period or else they be terminated and reissued to a lessee who is better able and willing to initiate production. However, we make no finding in this regard, as this is a matter which can only be addressed and determined at such time as the lessee seeks a suspension of the production requirements or when administrative action is taken to compel compliance or to terminate for noncompliance. *See* 43 CFR 3473.4; 30 U.S.C. § 207 (1976).

With regard to appellant's argument that 43 CFR

3473.3-2(d)(1) authorizes the Secretary to waive or reduce rental or royalty in certain instances, Departmental counsel has pointed out in his reply brief, the question is not properly before the Board now because appellant has not even taken the first step to seek a reduction by filing an application for waiver or reduction, with the Mining Supervisor. In addition, appellant asserts that for royalty computation purposes, no provision is made in the regulations for fixing the value of the coal to a lessee who mines for its own consumption rather than for sale to the open market. In this, appellant is simply wrong. Such a circumstance is expressly addressed in 30 CFR 211.63(b). We conclude that section 6 of the readjusted lease terms, concerning royalty obligations, was properly imposed in conformity with the Federal Coal Lease Amendments Act, 30 U.S.C. § 207(a) (1976). *Garland Coal and Mining Co.*, 49 IBLA 400 (1980); *Solicitor's Opinion*, M-36939 (Sept. 17, 1980).

With regard to appellant's objections to sections 15, 16, and 17 of the readjusted leases, we will simply adopt the following excerpts from the answer filed by Departmental counsel.[65 IBLA 150].

> Sections 15 and 16 of the lease establish various requirements intended to prevent discrimination and to promote equal opportunity in hiring. These lease clauses are required by regulations issued by the Office of Federal Contract Compliance Programs, U.S. Department of Labor.
>
> The regulations in 41 CFR Part 60-1 are intended to promote and insure equal opportunity for all persons working with government contracts or federally-assisted construction projects. 41 CFR 60-1.1 (1980). The regulations specifically apply to "government contracts," 41 CFR 60-1.1 which defines that term to mean:
>
> > . . . any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for *the use of real*

or personal property, including lease arrangements. [Emphasis added].

41 CFR 60-1.3 (1980).

The regulations go on to say that each government contract will contain certain equal opportunity requirements, 41 CFR 60-1.4 (1980). Paragraph 15 of the lease incorporates these requirements by reference as allowed by 43 CFR 60-1.4(d)(1980).

The Department of Labor's regulations also require government contractors to make various certifications of nonsegregated facilities. 41 CFR 60-1.8(b)(1980). Paragraph 16 of the lease contains the necessary certification.

Lone Star maintains that the lease terms corresponding to the Department of Labor regulations are unauthorized and overbroad. This Board, of course, has no authority to review the basis of regulations issued by the Department of Labor. 43 CFR 4.1(b)(3)(1980). Lone Star's complaint that the lease term should be limited to its leasehold interest and not directed to other facilities should also be directed to the Department of Labor. Labor's regulations say the Director of the Office of Equal Opportunity may:

> . . . exampt [*sic*] from the requirements of the equal opportunity clause any of a prime contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the order. [65 IBLA 151] 41 CFR 60-1.5(b)(2). To the best of our knowledge, Lone Star has made no effort to seek relief from the proper authority.

Section 17 of Lone Star's lease forms simply carries out four provisions of 30 U.S.C. § 187 (1976) which requires the Secretary to include, in each lease,

provisions to protect workers at mines using federal coal. As the Bureau's decision below says, "Section 17 of the readjusted leases was included [in part] under Section 2(1) in the original leases" issued to Lone Star. Strictly speaking, Section 17 is not a "readjustment" of a lease term, it is only a change in the location of an existing term. Under any view, the Mineral Leasing Act requires its inclusion in the lease.

BLM's decision in this case is a cogent and commendably explicit and correct exposition of the reasons for its inclusion of the subject provisions in the readjusted leases.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

/s/ Edward W, Stuebing
Edward W. Stuebing
Administrative Judge

We concur:

/s/ James L. Burski
Administrative Judge

/s/ C. Randall Grant, Jr.
Administrative Judge

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
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Arlington, Virginia 22203

[Logo]

LONE STAR STEEL CO.

IBLA 83-196 Decided February 24, 1983

Appeal from a decision of the New Mexico Office, Bureau of Land Management, rejecting objections against the imposition of certain readjusted terms and conditions on coal and lease BLM-C-018820 OK.

Affirmed in part; set aside in part and remanded.

1. Coal Leases and Permits: Leases--Mineral Leasing Act: Generally

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, *as amended*, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation.

APPEARANCES: William A. Osborn, Esq., Operations Counsel for Lone Star Steel Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lone Star Steel Company (Lone Star) appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated October 19, 1982, rejecting objections against the imposition of certain readjusted terms and conditions on coal lease BLM-C-018820 OK.

A previous lease of these coal deposits was assigned to

Lone Star in 1956. In 1962, upon expiration of that coal lease, Lone Star was issued a new lease in lieu of readjusting the prior lease. In a notice dated October 30, 1981, BLM notified Lone Star in advance of the 20th anniversary of the subject lease that there would be a readjustment of the lease terms and conditions pursuant to the provisions of 43 CFR 3451. Subsequently, BLM notified Lone Star of specific alterations in the lease terms and conditions.

Lone Star objected timely to the inclusion of sections 3, 5, 6, 11, 15, 16, and 17 of the readjusted lease terms. By decision dated October 19, [71 IBLA 92] 1982, BLM held that these readjusted lease provisions were properly imposed, stating in part:

> In response to the objections to the terms under sections 3, 6, 11, 15, 16 and 17 of the readjusted lease for BLM-C-018820 OK, we refer to the enclosed copies of our decision of October 26, 1981, and the decision of the Interior Board of Land Appeals, dated June 29, 1982, affirming our decision (65 IBLA 147). These decisions set out the reasons for the inclusion of each of these lease terms.
>
> Regarding the objection to section 5 of the readjusted [*sic*] of the readjusted lease, the rental rate of $3 per acre or fraction thereof is the minimum which can be charged in accordance with 43 CFR 3473.3-1.

Lone Star then appealed to this Board contending the same arguments presented in *Lone Star Steel Co.*, 65 IBLA 146 (1982). Appellant's previous appearance before this Board involved the same issues, but different leases. Appellant does not offer opposition or comment to that prior decision in its statement of reasons,m and it does not present any arguments, aside from those pertaining to section 5 of the readjusted lease, which were not addressed in the first *Lone Star* decision, *supra*.

[1] At the time the lease was issued, section 7 of the Mineral Leasing Act of 1920, provided: "[T]hat at the end of

each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine unless otherwise provided by law at the time of the expiration of such periods." *See Solicitor's Opinion,* M-36939, 88 I.D. 1003 (1981); *Coastal States Energy Co.,* 70 IBLA 386 (1983).

Where readjusted lease terms or conditions are addressed by statute or regulations, BLM is required to impose those terms and conditions. Likewise, this must apply those provisions imposed by law, and we are without authority to waive or disregard legal obligations merely because a lessee challenges their imposition in the administrative appeals process. *Lone Star Steel Co., supra* at 150. Decisions by BLM imposing statutory or regulatory requirements will be affirmed. Section 3--Diligence, section 5--Rental, section 6--Production Royalty, section 11--Logical Mining Unit (LMU), section 15--Equal Opportunity Clause, section 16--Certification of Nonsegregated Facilities, and section 17--Employment Practices all involve statutory or regulatory requirements.

At the time of readjustment of the lease in question the regulations defined the diligence standard as requiring coal production in commercial quantities before June 1, 1986, for pre-FCLAA leases. However, prior to BLM's decision in this case the diligence requirement was changed. In final [71 IBLA 93] rulemaking published in the *Federal Register* on July 30, 1982, "diligent development" was defined as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." 30 CFR 211.2(a)(13), 47 FR 33180 (July 30, 1982). The rulemaking further defined "diligent development period" as "a 10-year period which: (i) For Federal leases shall begin on * * * (B) The effective date of the first lease readjustment after August 4, 1976, for leases issued prior to August 4, 1976 * * *." 30 CFR 211.2(a)(14), 47 FR 33180-81 (July 30, 1982). In the preamble to this rulemaking the Department stated:

> The DOI has determined that the congressional intent in mandating this 10-year period was prospective. The

> statutory period cannot be applied retroactively to Federal leases issued prior to August 4, 1976. Upon the first lease readjustment after August 4, 1976, this 10-year mandate must, however, be imposed as a readjusted Federal coal lease term (see Solicitor's Opinion M-36939 dated September 17, 1981).

47 FR 33157 (July 30, 1982). Thus, since our previous decision the regulations have been amended to reflect a 10-year period from the effective readjustment of the lease in which the lessee is required to attain "production in commercial quantities." In response to appellant's assertions that "section 3 and 11 are simply unreasonable" and equitable considerations should be employed, we note that the regulations now define "commercial quantities" to mean "1 percent of the recoverable coal reserves or LMU recoverable coal reserves." 30 CFR 211.2(a)(7), 47 FR 33180 (July 30, 1982). The regulations require such production. We are without authority to waive that legal obligation. *Coastal States Energy Co., supra.*

Given the change in the requirement for diligent development, BLM's decision as it related to that requirement must be set aside and remanded so that the lease may be conformed to the regulation.

Section 5, concerning the rental term, is specifically required by 43 CFR 3473.3-1(a), which provides that "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than $3. The amount of the rental will be specified in the lease." Section 5 of the readjusted lease provides for a rental of $3 per acre or fraction thereof. Appellant objects, stating that the Federal Government is entitled only to royalties where it does not own the surface estate.[1] BLM properly imposed

---

[1] The records do not reflect the actual ownership of the surface estates or the total extent of Federal interest in the subject lands, but this is immaterial in light of the fact that the United States has leased to appellant all the rights, privileges, and interests necessary for the extraction of the coal deposits owned by it.

the new rental to comport with the regulatory and statutory requirement.

Appellant is incorrect in stating that the provision for rental payments is designed for land in which the United States holds title to both the surface and mineral estates. Originally the Mineral Leasing Act of 1920, 71 IBLA 94] section 7, began: "For the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties * * * and an annual rental * * * on the lands or coal deposits covered by such lease" Pub. L. 66-146 § 7, 41 Stat. 437, 439 (1920). That declaratory language was excluded by FCLAA without explanation. *See* 1976 U. S. Code Cong. and Ad. News 1943. *As amended,* section 7 now reads: "The Secretary shall by regulation prescribe annual rental on leases." 30 U.S.C. § 207 (1976). The rental assessed for a federal coal lease represents payments for the exclusive use of whatever interest the United States possesses pertinent to the extraction of that coal deposit. In situations where the United States does not own the surface estate, the lease normally will include the surface rights that have been obtained or reserved which are reasonably necessary to the extraction of the mineral. However, in any event, the per acre rental is an appropriate charge for the lease of the federally owned mineral estate, which is held and leased on the acreage basis.

As for appellant's objections to sections 6, 11, 15, 16, and 17 of the readjusted lease, we will simply refer and adhere to our previous holdings in *Lone Star Steel Co., supra,* as dispositive of the arguments presented again in this case.

Appellant has failed to establish error in the readjustment process or in the challenged terms and conditions in sections 5, 6, 11, 15, 16, and 17. BLM properly rejected appellant's objections and commendably provided an explanation of the rationale for the imposition of those sections in appellant's coal lease BLM-C-018820 OK. The BLM decision as it pertains to those sections is affirmed.

Therefore, pursuant to the authority delegated to the Board

of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside as to the diligent development requirement, and remanded.

/s/ Edward W. Stuebing
Edward W. Stuebing
Administrative Judge

We concur:
/s/ C. Randall Grant, Jr.
C. Randall Grant, Jr.
Administrative Judge

/s/ Anne Poindexter Lewis
Anne Poindexter Lewis
Administrative Judge

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

[Logo]

LONE STAR STEEL CO.

IBLA 83-828 Decided November 14, 1983

Appeal from a readjustment of coal lease BLM-C-018820 OK by the New Mexico State Office, Bureau of Land Management.

Dismissed.

1. Coal Leases and Permits: Leases--Regulations: Generally--Rules of Practice: Appeals: Dismissal
Where in a previous appeal the Board has considered and decided appellant's objections to several provisions incorporated in the readjusted terms of a coal lease, a second appeal based upon appellant's objection to still another provision in the same lease readjustment will be dismissed as untimely. Also, where the appeal concerns only potential adverse effects which might result if certain regulation changes were promulgated in the future, the appeal will be dismissed for want of appellant's standing to appeal.

APPEARANCES: William A. Osborn, Esq., Operations Counsel for Lone Star Steel Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lone Star Steel Company (Lone Star) appeals amendments to the readjusted terms of coal lease BLM-C-018820 OK, presented by the New Mexico Office, Bureau of Land Management (BLM), in a June 20, 1983, decision.

This particular readjustment was previously reviewed and affirmed by this Board, except for our modification of the

"diligent development" provision so as to conform that requirement to the revised regulation. *Lone Star Steel Co.*, 71 IBLA 92 (1983). When BLM attempted to implement that decision, Lone Star again appealed, raising yet another issue not addressed in its previous appeal involving the terms of readjustment of the same lease. Lone Star now contends that "The amendment terms are objectionable in that they would require Lone Star to agree in advance to presently unknown terms embodied in future regulations."

Although Lone Star does not cite the specific provision in the amended lease terms to which it alludes, we presume that the reference is to the language in section 1, which provides, in part: [77 IBLA 96]

> This lease is also subject to all regulations of the Secretary of the Interior (including but not limited to, 30 CFR Part 211 and Chapter VII and 43 CFR Group 3400), which are now in force or (except as expressly limited herein) hereafter in force, and all of such regulations are made a part hereof. No amendments to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in section 5 and 6 of this lease until the next readjustment of this lease.

[1] First, as we have already noted, the terms of the readjustment of this specific lease have been the subject of a previous appeal by Lone Star, which did not raise this issue in that proceeding, although it had full opportunity to do so then. This Board cannot entertain successive appeals in the same lease readjustment case simply because Lone Star elects to select one provision after another to complain of on a piecemeal basis.[1] This appeal is effectively time-barred pursuant to 43 CFR 3451.2 and 43 CFR 4.411. Where, as here, a BLM decision is merely the ministerial implementation of a prior order or decision of this Board in the same case

[1]The previous appeal concerned sections 3, 5, 6, 11, 15, 16, and 17 of the terms of readjustment.

no further appeal to the Board will lie, and the inclusion of an appeals paragraph in such a BLM decision is not binding on the Board and cannot create a new right of appeal. *Phelps Dodge Corp.*, 72 IBLA 226 (1983).

Moreover, appellant's concern is focused on what it describes as "presently unknown terms embodied in future regulations" which might "govern economic obligations and operating requirements on Lone Star." Appellant has not asserted that it is presently affected adversely; its concern is hypothetical, conjectural and future-oriented. Although it may be argued that the present imposition of the provision as part of readjusted lease terms constitute an exposure to possible harm in the future, we cannot agree that appellant has been "adversely affected" thereby, as required by 43 CFR 4.410 to confer upon a party standing to appeal.

Lone Star requests the Board to address conjectural circumstances which may not occur during the effective term of the lease. It is the policy of the Board to forego adjudication where no actual controversy exists and noncognizable interest has been adversely affected, avoiding advisory opinions based on hypothetical circumstances. *See* 43 CFR 4.410; *FMC Corp.*, 74 IBLA 389 (1983); *Hal v. Carlson, Jr.*, 62 IBLA 305 (1982). *Cf. Blackhawk Coal Co.*, 68 IBLA 96, 99-100 (1982) (section 7 governing advance royalty payments in lieu of continued operations).

We add, as dicta, that there are many forms of new, revised or amended regulations which might legitimately be applied to appellant's lease during the future, some which conceivably could work to the lessee's advantage, or at least not adversely affect it. Regulations can define terms, designate forms, or establish procedure. Other regulations may be necessary to implement new legislation concerning environmental protection, national emergency [77 IBLA 97] measures, or matters of health or safety, which could be made obligatory on the lessee in any event. Thus, the language of section 1 is not *per se* unlawful. Further, when new or revised regulations are promulgated, the Department must adhere to administrative

procedures found in 5 U.S.C. § 553 (1976), which afford interested parties the opportunity to become involved in the rulemaking process. If such regulations are applied to the lease and appellant feels that its rights have been adversely affected, it may then have a right to appeal to this Board for relief.[2]

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

/s/ Edward W. Stuebing
Edward W.Stuebing
Administrative Judge

We concur:

/s/ Gail M. Frazier
Gail M. Frazier
Administrative Judge

/s/ C. Randall Grant, Jr.
C. Randall Grant, Jr.
Administrative Judge

---

[2] It is noteworthy that there is a statutory restraint against the readjustment of the basic lease terms except at the intervals specified. *See Rosebud Coal Sales Co., Inc. v. Andrus*, 644 F.2d 849 (10th Cir. 1982).

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

[Logo]

LONE STAR STEEL CO.

IBLA 82-164 Decided December 5, 1984

Appeal from decision of the Tulsa District Office, Bureau of Land Management, rejecting appellant's objections to the imposition of readjusted terms on coal Lease BLM-C-018820 OK.

Remanded.

1. Coal Leases and Permits: Leases--Coal Leases and Permits: Readjustment--Mineral Leasing Act: Generally

   The operation and production requirement imposed on a coal lease may be suspended in the interest of conservation if it is not economically feasible to mine the coal because of current market conditions. Where the record is insufficient to determine whether Lease suspension is warranted, the case will be remanded to BLM to determine whether or not the Lease qualifies for suspension.

APPEARANCES: Virgil D. Medlin, Esq., Oklahoma City, Oklahoma, for appellant; R. Timothy McCrum, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION OF ADMINISTRATIVE JUDGE STUEBING

Lone Star Steel Company (Lone Star) appeals from a decision of the Tulsa District Office, Bureau of Land Management (BLM), dated September 26, 1983, rejecting objections to the imposition of readjusted terms and conditions on coal lease BLM-C-018820 OK.

First, it is necessary to trace the history of the lease, which has been the subject of prior cases before this Board. The subject lease was originally issued on May 1, 1962. On July 1, 1981, the lease was modified by the addition of 50 acres pursuant to section 3 of the Mineral Leasing Act of 1920, *as amended by* section 13(b) of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 203 (1982). The lease, as modified, expressly provided that Lone Star must achieve diligent development and maintain continued operations as mandated by the regulations.[1]

On October 30, 1981, BLM notified Lone Star that its lease would be readjusted upon its twentieth anniversary in 1982. Section 3(d) of the original lease provides:

> *Readjustment of terms*. The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20-year period, he will be deemed to have agreed to such terms. [Emphasis in original]

On March 18, 1982, a second notice was sent to Lone Star explaining that the readjusted lease would become effective on June 1, 1982. Lone Star appealed to this Board contesting the imposition of the readjusted lease terms. *See Lone Star Steel Co.*, 71 IBLA 92 (1983). In that appeal, Lone Star argued that sections 3 and 11 of the lease were simply unreasonable." This Board noted that Lone Star had previously raised the

---

1 Section 3 of the modified lease provides:

"The lease shall engage in diligent development of the coal resources subject to the lease. After diligent development is achieved, the lessee [84 IBLA 77] fn. 1 (continued) shall maintain operation of the mine or mines on the leased lands. The terms diligent development and continued operations are defined in the applicable regulations in Titles 10, 30, and 43 of the Code of Federal Regulations."

same issues with respect to different leases in *Lone Star Steel Co.*, 65 IBLA 146 (1982). *See Lone Star Steel Co.*, 71 IBLA at 93. This Board held that where readjusted lease terms or conditions are addressed by statute or regulations, BLM is required to impose those terms or conditions. *Id.*

When BLM attempted to implement this Board's decision in *Lone Star Steel Co.*, 71 IBLA 92, Lone Star appealed again, raising yet another issue not addressed in its previous appeal involving the terms of readjustment of the same leases. *Lone Star Steel Co.*, 77 IBLA 96 (1983). This Board dismissed that appeal noting that we "cannot entertain successive appeals in the same readjustment case simply because Lone Star elects to select one provision after another to complain of on a piecemeal basis." 77 IBLA at 97.

In the instant case, Lone Star appeals BLM's decision subjecting the lease to the diligent development requirements on July 1, 1981, when the lease was modified. On March 26, 1984, Lone Star filed a civil action in U.S. District Court seeking judicial review of BLM decisions concerning a number of its leases. *Lone Star Steel Co. v. Clark,* No. 84-173-C (E.D. Okla. Mar. 26, 1984). The subject lease, BLM-C-018820 OK, and the decision appealed from herein, were listed in Lone Star's complaint as a basis for the civil action, although Lone Star had not exhausted its administrative remedies. On June 29, 1984, Lone Star's civil action was dismissed without prejudice due to the failure of Lone Star's counsel to attend a litigation conference.

The issues presented in the instant appeal arose when Lone Star was informed on February 2, 1983, by the District Mining Supervisor of its production requirements under this lease, are as follows:

> A review of our records indicate that coal lease BLM-C-018820 has met the diligence requirements of section 3 of your readjusted lease, and is required to maintain continued operation by producing 1% of the recoverable reserves. If production from this lease is not

> anticipated for the lease year beginning May 1, 1983, *an application for suspension of continued operations, or the payment of advance royalty in lieu of continued operation should be made by May 1, 1983.* The regulations of 30 CFR 211.22 and 23, page 33187 and 33188 *cover the suspension of operations* and advance royalty. [Emphasis added.]

Lone Star responded by a letter dated April 28 and received April 29, 1983, within the time specified by the District Mining Supervisor for the filing of an application for suspension. In that letter Lone Star first argued that it had *not* met the due diligence requirements, and therefore was not required at this time to comply with the continued operations requirements. Alternately, its past production was sufficient to satisfy that obligation until early 1986 without further production. The letter then stated:

> 3. *Suspension of production would be in the interest of conservation, as contemplated in Section 39 of the statute (41 Stat. L. 437), and should be authorized pursuant to 30 C.F.R. 211.22(b).* [Emphasis in original.]
>
> The underground reserves on this tract are a low-volatile bituminous metallurgical coal. Because of its relatively poor combustion characteristics, it is not a very good fuel coal: it is rather a carbon-imparting coal with "coking" properties and therefore peculiarly useful to steelmaking. This coal is probably the rarest metallurgical coal on the market in the United States.
>
> Unfortunately, there is no real market for this type of coal currently. As you know, the steel industry is in a severe state of depression. We are aware of several other producers of this type of coal in the area who have either closed their mines or are attempting to sell them because of their lack of sales to steel companies.
>
> The alternative to suspension of production

would be to mine the coal and attempt to sell it for baser applications, such as utility plant fuel (and it might not be acceptable to fuel burners for the reasons stated above). This would be a waste of a relatively rare mineral resource and would require economic sacrifice [sic] in the form of extraordinarily low prices in order to make a poor-burning coal attractive to fuel users. [84 IBLA 79]

In the event that the preceding two arguments are ultimately determined to fall short on legal grounds, but without waiving either of them, *then we would have you treat this third argument as an application for suspension of production [pursuant to Section 211.22(b)] in order to meet the May 1, 1983 submission deadline.* [Emphasis added.]

No reply was made for nearly 5 months, until September 26, 1983, when the Associate District Manager wrote the following to Lone Star:

In reply to your letter of April 28, 1983, Lease BLM-C-018820 (OK) became subject to diligent development regulations July 1, 1981, when the lease was modified to include additional acreage. Section 3 of the modified lease form addresses diligent development. The lease met the diligent requirements on April 1, 1982, and the continued operations requirements on April 1, 1983. The recoverable reserves as of July 1, 1981, were 1,951,000 tons, diligence development was based on a production of 2-1/2% of this amount, with continued operation requiring the production of 1% of this amount. Diligent development is based on lease production and is not related to the method of production.

The Mineral Leasing Act authorizes the Secretary to accept the payment of advance royalty in lieu of continued operation. For this lease, the advance royalty would be 8% of value of 19,510 tons payable in advance each year that the continued operations requirement is not met.

> *The Mineral Leasing Act also authorizes the Secretary to suspend the operation and production of a lease in the interest of conservation. Additional data is needed to determine if this lease qualifies for a suspension in the interest of conservation.* [Emphasis added.]
>
> If you determine that these decisions are unacceptable , you are allowed 30 days from the receipt of this letter to file a notice of appeal with this office according to 43 CFR 4 Subpart E.

There was no explanation of what "additional data" was needed in order to adjudicate Lone Star's application for suspension, and Lone Star apparently did not inquire. Instead it filed this appeal.

The arguments raised on appeal include: (1) Lone Star has not met the due diligence requirements and is, therefore, not required to comply with the continued operations regulations, (2) the readjustment terms were not reasonable, (3) Lone Star has already satisfied the continued operations requirements , (4) BLM's interpretation of the due diligence and continued operations requirements are arbitrary, capricious, unreasonable, unrealistic, and prejudicial. [84 IBLA 80]

Lone Star also contends that surrender of the lease would prejudice its future lease applications. However, neither precedent nor the pertinent regulations support appellant's contention in this regard.

Lone Star's position with respect to lease suspension is ambiguous. In its objections filed with BLM on April 28, 1983, Lone Star requested that its arguments be treated as an application for suspension. Yet, in its statement of reasons it says, "Lone Star Steel Company may apply to the Secretary for a suspension of operations but said suspension is available for only six months which is hardly a workable solution to the development and operation of an underground deep mine." Apparently counsel for Lone Star is unaware that the company

has already applied for such a suspension. Moreover, he is mistaken in his reason for his rejection of a suspension as potential solution. There is no specific period or time limitation on suspension granted in the interest of conservation. *See* 43 CFR 3483.3. They can continue for as long as there is a perceived need, until terminated by the authorized officer. Thus, it appears that suspension of the lease would be a viable solution if BLM, after due consideration, finds that such a suspension is warranted.

We therefore remand this matter to the Tulsa District Office, BLM, with instructions to review Lone Star's contentions that an attempt to currently continue production would not be economically feasible or in the interest of conservation. Then BLM should act on Lone Star's request for a suspension, which will be subject to appeal. It is therefore unnecessary for this Board to address appellant's other arguments at this time.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is remanded to BLM for further action consistent with this decision.

/s/ Edward W. Stuebing
Edward W. Stuebing
Administrative Judge

We concur:

/s/ C. Randall Grant, Jr.
C. Randall Grant, Jr.
Administrative Judge

/s/ Gail M. Frazier
Gail M. Frazier
Administrative Judge

[84 IBLA 81]

APPENDIX D

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
New Mexico State Office
P.O. Box 1449
Santa Fe, New Mexico 87501

FEB 17, 1982

CERTIFIED--RETURN RECEIPT REQUESTED

Decision

Lone Star Steel Company	:	
P. O. Box 35888	:	Coal
Dallas, TX 75235	:	
	:	

Lease Readjusted Effective January 1, 1982

By Notice of Readjusted Lease Terms dated October 6, 1981, this office transmitted to Lone Star Steel Company the readjusted terms and conditions of coal lease NM 05996 OK. Lone Star Steel Company has filed objections to the following terms and conditions:

Section 3.0 Diligence
Section 11.0 Logical Mining Units (LMU)
Section 6.0 Production Royalty
Section 15.0 Equal Opportunity Clause
Section 16.0 Certification of Nonsegregated Facilities
Section 17.0 Employment Practices

We respond first to the objections as to the diligence requirements and the provision on logical mining units concerning the exhaustion of the leased reserves within 40 years in order to comply with such diligence. On May 26, 1976 and December 29, 1976, the Department of the Interior adopted diligent development and continued operations regulations. In the Federal Coal Leasing Amendments Act of

1976 (FCLAA), Congress adopted diligent development and continued operations standards for new leases. The Secretary in his June 1979 decision on the Federal coal management program directed enforcement of the Department's pre-FCLAA diligence requirements and, thus, the 1976 regulations were recodified and included in the regulations published July 19, 1979. Accordingly, all leases readjusted subsequent to the effective date of the 1976 regulations must be made subject to the diligence requirements under 43 CFR 3475 by virtue of the readjusted terms.

Lessee's attention is invited to the regulations under 43 CFR 3475.4(b) which provide that for coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased under certain conditions as set out therein.[1]

[2]Regarding the production royalty, the regulations contained in 43 CFR 3451.1(a)(2) require that any lease subject to readjustment must be readjusted to conform to the minimum royalty as prescribed in 43 CFR 3473.3-2. That minimum royalty has been determined to be not less than 12.5 percent of the value of the coal removed from a surface mine and not less than 8 percent of value of the coal removed from an underground mine. However, relief is provided in 43 CFR 3473-2(d)(1). This provision allows the Secretary to reduce the royalty, but not advance royalty, whenever a lease cannot be successfully operated under the terms provided therein. An application for such relief must be filed in triplicate with the District Mining Supervisor, Minerals Management Service, 6136 E. 32nd Avenue, Tulsa, Oklahoma 74135.

Sections 15 and 16 of the readjusted terms must be included in every lease in order to be in compliance with Executive Order 11246 of September 24, 1965 and the regulations of the Department of Labor under Title 41, Chapter 60. Except as otherwise provided, we are required by 41 CFR 60-1.4 to include the equal opportunity clause contained in Section 202 of the order in each Government contract. Also, 41 CFR 60-1.8 requires that such contracts contain a certification of

nonsegregated facilities.

Wherever the word "contractor" appears in the equal opportunity clause on Form 1140-2 attached to the readjusted lease, it is intended to mean the lessee and the lessee must comply with the provisions therein.
As defined in 41 CFR 60-1.3 a "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real property or personal property, including lease arrangements. Accordingly, all land use forms have been appropriately revised to include the equal opportunity clause and certification of nonsegregated facilities.

Section 17 of the readjusted leases was included under Sec. 2(1) in the original lease issued April 1, 1960, and it is required by Section 30 of the Act of February 25, 1920 (41 Stat. 449) as amended.

For the reasons stated above, the terms and conditions objected to by the lessee must remain as set out in the coal lease readjustments transmitted with our notice of October 6, 1981.

A copy of the lease readjustments, regulations and executive order referred to above are enclosed.

A period of 30 days from receipt of this decision is allowed in which to appeal or relinquish the subject lease. If no action is taken within the time allowed Lone Star Steel Company will be deemed to have agreed to the readjusted terms.

You have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (copy enclosed). Also see enclosed Form 1842-1. If an appeal is filed, the notice of appeal must be timely received in this office so that the case file can be transmitted to the Board.

The appellant must also serve a copy of the notice of appeal

and any statement of reasons, written arguments or briefs on the Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, New Mexico 87501 not later than 15 days after filing the document.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

If an appeal is taken, the existing lease terms and conditions will remain in effect pending the outcome of the appeal. The increased rental and royalties, although not collected, will accrue from their effective dates as shown on the Notice of Readjusted Lease and proposed readjusted lease form, until the issues on appeal are finally determined. If this decision is affirmed as to the issue of the increased rental and royalty rates, the accrued rental and royalty will be payable immediately. However, should the decision be reversed, the existing rental and royalty rates will remain in effect until the next readjustment date.

/s/ Tessie R. Anchondo
Acting Chief, Mining Unit

Enclosures (7)
1-Lease Readjustment
2-Form 1842-1
3-Appeals Procedures
4-Coal Regulations (Circ. 2449)
5-Cy E.O. 11246
6-Cy 41 CFR 60-1
7-Cy Section 30, Act of 2/25/20

cc:
Lone Star Steel Company, Lone Star, Texas (certified mail)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
New Mexico State Office
P.O. Box 1449
Santa Fe, New Mexico 87501

OCT 29, 1981

CERTIFIED--RETURN RECEIPT REQUESTED

Decision

Lone Star Steel Company P. O. Box 35888 Dallas, TX 75235	: : : :	Coal

Lease Readjusted Effective April 1, 1982

By Notice of Readjusted Lease Terms dated January 16, 1981, this office transmitted to Lone Star Steel Company the readjusted terms and conditions of coal lease NM 050405, 050406, and 05992 Okla. Lone Star Steel Company has filed timely objections to the following terms and conditions:

Section 3.0 Diligence
Section 11.0 Logical Mining Units (LMU)
Section 6.0 Production Royalty
Section 15.0 Equal Opportunity Clause
Section 16.0 Certification of Nonsegregated Facilities
Section 17.0 Employment Practices

We respond first to the objections as to the diligence requirements and the provision on logical mining units concerning the exhaustion of the leased reserves within 40 years in order to comply with such diligence. On May 26, 1976 and December 29, 1976, the Department of the Interior adopted diligent development and continued operations regulations. In the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Congress adopted diligent development and continued operations standards for new leases. The Secretary

in his June 1979 decision on the Federal coal management program directed enforcement of the Department's pre-FCLAA diligence requirements and, thus, the 1976 regulations were recodified and included in the regulations published July 19, 1979. Accordingly, all leases readjusted subsequent to the effective date of the 1976 regulations must be made subject to the diligence requirements under 43 CFR 3475 by virtue of the readjusted terms.

Further, the authority to promulgate regulations defining diligence of Federal coal leases has been transferred to the Secretary of Energy by Section 302(b) of the Department of Energy Organization Act, so that the Secretary of the Interior has no authority to alter the substantial diligence requirements.[1]

[2] Lessee's attention is invited to the regulations under 43 CFR 3475.4(b) which provide that for coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased under certain conditions as set out therein.

Regarding the production royalty, the regulations contained in 43 CFR 3451.1(a)(2) require that any lease subject to readjustment must be readjusted to conform to the minimum royalty as prescribed in 43 CFR 3473.3-2. That minimum royalty has been determined to be not less than 12.5 percent of the value of the coal removed from a surface mine and not less than 8 percent of value of the coal removed from an underground mine. However, relief is provided in 43 CFR 3473-2(d)(1) in that in order to encourage the greatest ultimate recovery of coal and in the interest of conservation, the Secretary, whenever he determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend, or reduce the rental, or reduce the royalty but not the advance royalty, on an entire leasehold, or on any deposit, tract, or portion thereof, except that in no case shall the royalty be reduced below 5 percent for underground coal. An application for such relief must be filed in triplicate with the District Mining Supervisor,

Minerals Management Service, 6136 E. 32nd Avenue, Tulsa, Oklahoma 74135.

Sections 15 and 16 of the readjusted terms must be included in every lease in order to be in compliance with Executive Order 11246 of September 24, 1965 and the regulations of the Department of Labor under Title 41, Chapter 60. Except as otherwise provided, we are required by 41 CFR 60-1.4 to include the equal opportunity clause contained in Section 202 of the order in each Government contract. Also, 41 CFR 60-1.8 requires that such contracts contain a certification of nonsegregated facilities.

Wherever the word "contractor" appears in the equal opportunity clause on Form 1140-2 attached to the readjusted lease, it is intended to mean the lessee and the lessee must comply with the provisions therein.

As defined in 41 CFR 60-1.3 a "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real property or personal property, including lease arrangements. Accordingly, all land use forms have been appropriately revised to include the equal opportunity clause and certification of nonsegregated facilities.

Section 17 of the readjusted leases was included under Sec. 2(1) in the original lease issued April 1, 1960, and it is required by Section 30 of the Act of February 25, 1920 (41 Stat. 449) as amended.

For the reasons stated above, the terms and conditions objected to by the lessee must remain as set out in the coal lease readjustments transmitted with our notice of October 6, 1981.

A copy of the lease readjustments, regulations and executive order referred to above are enclosed.

A period of 30 days from receipt of this decision is allowed in

which to appeal or relinquish the subject lease. If no action is taken within the time allowed Lone Star Steel Company will be deemed to have agreed to the readjusted terms.

[3] You have the right of appeal to the Board of Land Appeals, Office of the Secretary, in accordance with the regulations in 43 CFR Part 4 (copy enclosed). Also see enclosed Form 1842-1. If an appeal is filed, the notice of appeal must be timely received in this office so that the case file can be transmitted to the Board.

The appellant must also serve a copy of the notice of appeal and any statement of reasons, written arguments or briefs on the Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, New Mexico 87501 not later than 15 days after filing the document.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

If an appeal is taken, the existing lease terms and conditions will remain in effect pending the outcome of the appeal. The increased rental and royalties, although not collected, will accrue from their effective dates as shown on the Notice of Readjusted Lease and proposed readjusted lease form, until the issues on appeal are finally determined. If this decision is affirmed as to the issue of the increased rental and royalty rates, the accrued rental and royalty will be payable immediately. However, should the decision be reversed, the existing rental and royalty rates will remain in effect until the next readjustment date.

/s/ Theresa Romero
Acting Chief, Mining Section

Enclosures (7)
1-Lease Readjustment
2-Form 1842-1
3-Appeals Procedures
4-Coal Regulations (Circ. 2449)

5-Cy E.O. 11246
6-Cy 41 CFR 60-1
7-Cy Section 30, Act of 2/25/20

cc:
Lone Star Steel Company, Lone Star, Texas

bcc:
Chief, Division of Resources
Attn: M.D. Larragoite
Chief, Division of P&EC
Deputy Conservation Manager--Mining,
SCR, USGS, Albuquerque
District Mining Supervisor, USGS, Tulsa
DM, Albuquerque District Office
Oklahoma (RAH)

943c-1:TRomero:ad:10/15/81:x6439

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
[Logo] Tulsa District Office
6136 East 32nd Place
Tulsa, Oklahoma 74135

In Reply
Refer to:
3400(043c-1)
BLM-C-018820(OK) SEP 26, 1983

CERTIFIED--RETURN RECEIPT REQUESTED

Mr. C.K. Olive
Chief Geologist
Coal Operations
Lone Star Steel Company
Lone Star, TX 75668

Dear Mr. Olive:

In reply to your letter of April 28, 1983, Lease BLM-C-018820(OK) became subject to the diligent development regulations July 12, 1981, when the lease was modified to include additional acreage. Section 3 of the modified lease form addresses diligent development. The lease met the diligent requirements on April 1, 1982, and the continued operations requirement for the year ending April 1, 1983. The recoverable reserves as of July 1, 1981, were 1,951,000 tons, diligent development was based on production of $2^{1/2}\%$ of this amount, with continued operation requiring the production of 1% of this amount. Diligent development is based on lease production and is not related to the method of production.

The Mineral Leasing Act authorizes the Secretary to accept the payment of advance royalty in lieu of continued operation. For this lease, the advance royalty would be 8% of value of 19,510 tons payable in advance for each year that the continued operations requirement is not met.

The Mineral Leasing Act also authorizes the Secretary to suspend the operation and production of a lease in the interest of conservation. Additional data is needed to determine if this lease qualifies for a suspension in the interest of conservation.

If you determine that these decisions are unacceptable, you are allowed 30 days from the receipt of this letter to file a notice of appeal with this office according to 43 CFR 4 Subpart E.

If you have any questions, please contact Ernest R. Achterberg of this office.

Sincerely yours,

/s/ Raymond W. Vingard
Acting Associate District Manager

APPENDIX E

NM 059992 Okla.
3500 (943c-2)
FEB - 9 1979

CERTIFIED--RETURN RECEIPT REQUESTED

DECISION

Lessee:	:	
Lone Star Steel Company	:	Coal
P. O. Box 12226	:	
Dallas, TX 75225	:	Lease Date:
	:	June 1, 1959

Notice of Proposed Readjustment of Lease Terms
Additional Evidence Required

In accordance with the regulations under 43 CFR 3522.2-1, the terms of the captioned coal lease are subject to readjustment at the end of each 20-year period succeeding the date of the lease. The lessee is hereby notified of the proposed readjustment of lease terms. The terms of the readjustment will be sent to the lessee when they have been finally determined.

Within 30 days from receipt of this notice the lessee must disclose the nature and extent of its coal holdings to the Department of Justice. Therefore, the lessee must submit to the Bureau of Land Management, P. O. Box 1449, Santa Fe, New Mexico 87501, a breakdown of committed and uncommitted recoverable coal reserves controlled (owned or leased by him), specifying: the county in which each tract is located, whether the tract is federal or nonfederal coal; its acreage; its tonnage; its BTU content or rank; its sulphur content; whether it is strippable; and the nature of the surface ownership, federal, state or private (and what if any surface interests are controlled by the lessee). In addition, a description of the proposed use of the coal is required,

including its prospective buyer, the location of its use, and the method of transportation to the place of use.

The attached form may be used for this purpose. Please note that this form does not contain all the columns for all of the necessary information. It does not include a place for the prospective use of the coal under lease.

The Justice Department will maintain this data and insure the confidentiality of all submitted data in accordance with its duties, under the Privacy Act and the Freedom of Information Act.

This decision is final thirty days from the day it is received.

[2] The right of appeal to the Board of Land Appeals, Office of the Secretary is allowed in accordance with the regulations in 43 CFR Part 4.400-402 and 4.411-414 (copy attached). Also see enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be timely filed in this office so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

/s/ Marie D. Larragoite
Chief, Mining Section

Enclosures - 3
1 - Form for Lessee's Statement
2 - Copy of Regulations
3 - Form 1842-1
cc:
Division of Resources (Attn: Reed L. Smith;
W. J. Egan)
Planning & Environmental Coordination Staff
(Attn. Van Manning)
Albuquerque District Office
Oklahoma Project Office
Area Mining Supervisor, GS, Tulsa
943c-2:TRomero:ssp:2-8-79:x439

NM 050405 Okla.
3500 (943c-2)

FEB - 9 1979

CERTIFIED--RETURN RECEIPT REQUESTED

DECISION

Lessee:	:	
Lone Star Steel Company	:	Coal
P. O. Box 12226	:	
Dallas, TX 75225	:	Lease Date:
	:	December 1, 1959

Notice of Proposed Readjustment of Lease Terms
Additional Evidence Required

In accordance with the regulations under 43 CFR 3522.2-1, the terms of the captioned coal lease are subject to readjustment at the end of each 20-year period succeeding the date of the lease. The lessee is hereby notified of the proposed readjustment of lease terms. The terms of the readjustment will be sent to the lessee when they have been finally determined.

Within 30 days from receipt of this notice the lessee must disclose the nature and extent of its coal holdings to the Department of Justice. Therefore, the lessee must submit to the Bureau of Land Management, P. O. Box 1449, Santa Fe, New Mexico 87501, a breakdown of committed and uncommitted recoverable coal reserves controlled (owned or leased by him), specifying: the county in which each tract is located, whether the tract is federal or nonfederal coal; its acreage; its tonnage; its BTU content or rank; its sulphur content; whether it is strippable; and the nature of the surface ownership, federal, state or private (and what if any surface interests are controlled by the lessee). In addition, a description of the proposed use of the coal is required, including its prospective buyer, the location of its use, and the

method of transportation to the place of use.
The attached form may be used for this purpose. Please note that this form does not contain all the columns for all of the necessary information. It does not include a place for the prospective use of the coal under lease.

The Justice Department will maintain this data and insure the confidentiality of all submitted data in accordance with its duties, under the Privacy Act and the Freedom of Information Act.

This decision is final thirty days from the day it is received.

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/s/ Marie D. Larragoite
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Planning & Environmental Coordination Staff
(Attn. Van Manning)
Albuquerque District Office
Oklahoma Project Office
Area Mining Supervisor, GS, Tulsa

943c-2:TRomero:ssp:2-8-79:x439

NM 050406 Okla.
3500 (943c-2)

FEB - 9 1979

CERTIFIED--RETURN RECEIPT REQUESTED

DECISION

Lessee:	:	
Lone Star Steel Company	:	Coal
P. O. Box 12226	:	
Dallas, TX 75225	:	Lease Date:
	:	December 1, 1959

Notice of Proposed Readjustment of Lease Terms
Additional Evidence Required

In accordance with the regulations under 43 CFR 3522.2-1, the terms of the captioned coal lease are subject to readjustment at the end of each 20-year period succeeding the date of the lease. The lessee is hereby notified of the proposed readjustment of lease terms. The terms of the readjustment will be sent to the lessee when they have been finally determined.

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including its prospective buyer, the location of its use, and the method of transportation to the place of use.

The attached form may be used for this purpose. Please note that this form does not contain all the columns for all of the necessary information. It does not include a place for the prospective use of the coal under lease.

The Justice Department will maintain this data and insure the confidentiality of all submitted data in accordance with its duties, under the Privacy Act and the Freedom of Information Act.

This decision is final thirty days from the day it is received.

[2] The right of appeal to the Board of Land Appeals, Office of the Secretary is allowed in accordance with the regulations in 43 CFR Part 4.400-402 and 4.411-414 (copy attached). Also see enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be timely filed in this office so that the case file can be transmitted to the Board. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

/s/ Marie D. Larragoite
Chief, Mining Section

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cc:
Division of Resources (Attn: Reed L. Smith;
W. J. Egan)
Planning & Environmental Coordination Staff
(Attn. Van Manning)
Albuquerque District Office
Oklahoma Project Office
Area Mining Supervisor, GS, Tulsa
943c-2:TRomero:ssp:2-8-79:x439

NM 059996 OK
3451 (943c-4)

November 19, 1979

CERTIFIED--RETURN RECEIPT REQUESTED

Notice

Lone Star Steel Company :
P.O. Box 35888 : NM 059996 OK
Dallas, Texas 75235 :

Lease Terms and Conditions to be Readjusted

The above-identified coal lease issued effective April 1, 1960, and its terms and conditions become subject to readjustment on April 1, 1980.

Notice is hereby given that the lease terms and conditions will be readjusted under the provisions of 43 CFR 3451.

A notice containing the readjusted terms and conditions will be forwarded to you within two years of receipt of this notice. The readjustment will become effective 60 days after your receipt of that notice.

/s/Theresa Romero
Acting

cc:
Chief, P&ECS
Resources (GSchloemer & WJEgan)
DM, Albuquerque
ORAH
AMS, USGS, Tulsa

943c-4:DCover:1v:11/19/79:x689

In Reply Refer to
BLM-C-018820 OK
3400 (943c-2)

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
New Mexico State Office
P.O. Box 1449
Santa Fe, New Mexico 87501

[Logo]

October 30, 1981

CERTIFIED--RETURN RECEIPT REQUESTED

NOTICE

Lone Star Steel Company Lone Star, TX 75668	:	BLM-C-018820 OK

Lease Terms and Conditions
To Be Readjusted

The above-identified coal lease issued effective May 1, 1962 and its terms and conditions become subject to readjustment on May 1, 1982.

Notice is hereby given that the lease terms and conditions will be readjusted under the provisions of 43 CFR 3451.

A notice containing the readjusted terms and conditions will be forwarded to you within two years of receipt of this notice.

/s/ Tessie R. Anchondo

APPENDIX F

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number NM 059992 Okla
Date of Lease June 1, 1959

COAL LEASE READJUSTMENT

This lease between the United States of America (the lessor) through the Bureau of Land Management (BLM) and Lone Star Steel Company, Lone Star, Texas 75668 (lessee) is readjusted, effective as of April 1, 1981 .

Sec. 1. STATUTES AND REGULATIONS - This lease readjustment is issued pursuant and subject to the terms and provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sections 181-263, hereinafter referred to as the Act, and of the Surface Mining Control and Reclamation Act of 1977. This lease is also subject to all regulations of the Secretary of the Interior (including but not limited to, 30 CFR Part 211 and 43 CFR Group 3000), and to all regulations of the Secretary of Energy promulgated pursuant to Section 302 of the Department of Energy Organization Act which are now or hereafter in force, and which are made a part hereof. No amendment to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease.

Sec. 2. RIGHTS OF LESSEE. The lessor, in consideration of the rents and royalties and other conditions hereinafter set forth, hereby grants to the lessee the exclusive right and privilege to mine and dispose of all coal in the following-described tracts (lease lands) situated in the State of Oklahoma:

T. 8 N., R. 23 E., Indian Meridian
Sec. 14: $SE^{1/4}SW^{1/4}$, $S^{1/2}SE^{1/4}$
23: All

24: S1/2
25: N1/2N1/2, SW1/4NW1/4
26: N1/2, N1/2SW1/4

containing 1680 acres, more or less, with the right to construct all such work[s] [*sic*], buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted for so long as this lease remains in full force and effect under any provisions of the law and the applicable regulations thereunder.

Sec. 3. DILIGENCE. The lessee shall engage in the diligent development of the coal resources subject to the lease by timely preparation for and initiation of production of coal from this lease or from the Logical Mining Unit (LMU) of which this lease is a part so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in the regulations (43 CFR 3475.4). After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands as defined in the regulations.

Sec. 4 BONDS. The lessee shall file with the appropriate BLM office a lease bond in the amount of $5,000, for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other items of this lease, the regulations and the Act. An increase in the amount of the lease bond may be required by the lessor at any time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL. An annual rental of $3.00 for each acre of fraction thereof shall be paid in advance on or before the anniversary date of this lease. Rentals under this lease

shall be payable for each and every year during the continuance of the lease. Rentals paid for any year prior to this readjustment shall be credited against royalties for that year. Rentals due and payable on or after the lease year commencing on the effective date of this readjustment may not be credited against royalties (43 CFR 3473.3-1).

Sec. 6. PRODUCTION ROYALTY. The lessee shall pay a production royalty of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground mining methods. The value of coal shall be determined as set forth in the regulations. Production royalties paid for a calendar month shall be reduced by the amount of any advance royalties paid under this lease to the extent that such advance royalties have not been used to reduce production royalties in a previous month. Production royalties shall be payable the final day of the month succeeding the calendar month in which coal is mined.

Sec. 7. ADVANCE ROYALTY. Upon request by the lessee the mining Supervisor may accept, for a total of not more than ten years, the payment of advance royalties in lieu of the condition of continued operation for any particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and the mining Supervisor, which shall be made a part of the lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations. The advance royalty shall be based on a percent of value of a minimum number of tons which shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of approval of the mining and reclamation plans.

Sec. 8. METHOD OF PAYMENTS. The lessee shall make rental payments to the appropriate BLM office until either production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the appropriate office of the Mining Supervisor. All remittances to BLM shall be made payable to

the Bureau of Land Management; those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLORATION PLAN. As specified in the regulations, the lessee shall submit an exploration plan before conducting any exploration on the leased lands, except casual use, between the effective date of this lease and the date of approval of the mining plan. The lessee shall not commence exploration without an approved exploration plan. Thereafter, the lessee shall conduct all exploration in accordance with the approved exploration plan.

Sec. 10. MINING PLAN. In accordance with the regulations in 30 CFR 211, 700 and 800, if the Lessee has not yet submitted a mining plan, he must do so within three years after the effective date of this readjustment. Unless or until the mining plan has been approved, the Lessee shall not conduct any operations on the leased lands except casual use or exploration, if an exploration plan has been approved. Thereafter, the Lessee shall conduct all operations in accordance with the approved mining plan.

Sec. 11. LOGICAL MINING UNIT (LMU) - This lease is automatically considered to be an LMU and may be combined with other land, including other Federal leaseholds and non-Federal interests in coal, to form a larger LMU. The mining plan for such enlarged LMU must include a production schedule that provides for the mining of all the LMU reserves, both Federal and non-Federal, in a period of not more than 40 years from the date of the approval of the plan. The definition of LMU and LMU reserves and other conditions applicable to them are set forth in the regulations (43 CFR 3400.0-5).

Sec. 12. OPERATIONS ON LEASED LANDS. In accordance with conditions of this lease, the exploration and mining plans, the regulations and the Act, the lessee shall exercise reasonable diligence, skill, and care in all operations on leased lands. The lessee's obligations shall include, but not be limited to the following:

(a) The lessee shall conduct all operations on the leased lands so as to avoid injury to life, health, or property.

(b) The lessee shall conduct operations in such a manner as may be needed to avoid or, where avoidance is impracticable, to minimize and where practicable, to repair damage to: (1) any forage and timber growth on Federal or non-Federal lands in the vicinity of the leased lands; (2) crops, including forage and timber, or improvements of a surface owner; or (3) improvements, whether owned by the United States or by its permittees, licensees, or lessees. The lessor must approve the steps to be taken and the restoration to be made in the event of the occurrence of damage described in this subsection.

(c) The lessee shall minimize to the maximum extent possible wasting of the coal deposits and other mineral and nonmineral resources, including but not limited to, surface resources which may be found in, upon, or under such lands.

Sec. 13. CULTURAL RESOURCES -

(a) Before the approval of a mining plan, the authorized officer may require a survey of all or part of the leased land to provide an inventory of any historical, cultural archeological, and paleontological values. The survey shall be conducted by a qualified professional archeologist, approved by the authorized officer, and a report of the survey shall be submitted to the authorized officer. The approval of an exploration or mining plan or the continuation of lease operations may be conditioned on the approval of the survey report and the approval of measures to protect the historical, cultural, archeological and paleontological values. The cost of any survey or measures to protect such values discovered as a result of the survey shall be borne by the lessee, and items and features of historical, cultural, archeological, or paleontological value shall remain under the jurisdiction of the United States.

(b) If any items or features of historical, cultural, archeological or paleontological value are discovered during

lease operations, the lessee shall immediately notify the Mining Supervisor and shall not disturb such items or features until the Mining Supervisor issues instructions. If the lessee is ordered to take measures to protect any items or features of historical, cultural, archeological, or paleontological value discovered during lease operations, the cost of the measures shall be borne by the lessor, and such items and features shall remain under the jurisdiction of the United States.

Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS -

(a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, licenses, permits, easements, or rights-of-way, including leases for the development of minerals other than coal under the Act, The lessor may authorize any other uses of the leased lands that do not unnecessarily interfere with the exploration and mining operations of the lessee, and the lessee shall make all reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right (1) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or (2) to dispose of any resource in such lands if such deposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

Sec. 15. EQUAL OPPORTUNITY CLAUSE - The lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor. See attachment.

Sec. 16. CERTIFICATION OF NONSEGREGATED FACILITIES - By entering into this lease, the lessee certifies

that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The lessee agrees that a breach of this certification is a violation of the Equal Opportunity clause of this lease. As used in this certification the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Lessee further agrees that (except where lessee has obtained identical certifications from proposed contractors and subcontractors for specific time periods) lessee will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts succeeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that lessee will retain such certifications in lessee's files; that lessee will forward the following notice to such proposed contractors and subcontractors (except where proposed contractor and subcontractor has submitted identical certifications for specific time period). Notice is to be provided by lessee to prospective contractors and subcontractors of requirements for certification of nonsegregated facilities. A *Certification of Nonsegregated Facilities* as required by the May 9, 1967, order (32 F.R. 7439 May 19, 1967) on *Elimination of Segregated Facilities* by the Secretary of Labor, must be submitted prior to the award of a contract exceeding $10,000 which is not exempt from provisions of the Equal Opportunity clause. Certification may be submitted either for each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

Sec. 17. EMPLOYMENT PRACTICES - The lessee shall

pay all wages due persons employed on the leased lands at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employees complete freedom to purchase goods and service of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day for underground workers, except in the case of emergency. The lessee shall employ no person under the age of 16 years in any mines below the surface. If the laws of the State in which the mine is situated provides for a minimum age restriction for mining below the surface, other than the requirements of Federal law, the laws of the State shall prevail.

Sec. 18. MONOPOLY AND FAIR PRACTICES - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 187 and 189) necessary to insure that any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such orders and regulations shall upon promulgation be binding upon the lessee.

Sec. 19. ASSIGNMENT.
This lease may be assigned, upon approval of the authorized officer in accordance with the provisions of 43 CFR subpart 3453. An assignment will become effective on the first day of the month following approval by the authorized officer or, if the assignee requests, the first day of the month of approval.

Sec. 20. RELINQUISHMENT OF LEASE. The lessee may file a request to relinquish all or any legal subdivision of this lease. The request shall be filed in duplicate with the authorized officer. The authorized officer shall approve the relinquishment if he determines that the lessee has complied with the requirements of the lease, the exploration and mining plans, the regulations and the Act. Upon approval, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to pay all accrued rentals and royalties and to comply with all

other requirements of the lease, the regulations and the Act.

Sec. 21. NONCOMPLIANCE. Any failure to comply with the conditions of this lease, the approved exploration and mining and reclamation plans, the regulations, or the Act shall be dealt with in accordance with the procedures set forth in the regulations.

Sec. 22. WAIVER OF CONDITIONS. The lessor reserves the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS -

(a) The lease is subject to reasonable readjustment of any conditions of the lease, including royalty rates, at the end of this readjustment period on June 1, 1989, and subject to readjustment at the end of each 10-year period thereafter.The lessor shall notify the lessee whether he intends to readjust conditions and, if he intends to readjust, the nature of the readjustments. The lessor shall give notice 120 days before the end of this readjustment period as to whether the lease terms will be readjusted. Unless the lessee, within 60 days after the receipt of the proposed readjusted conditions files with the lessor an objection or relinquishes the lease as of the effective date of the readjustment, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions, and agreement cannot be reached between the lessor and the lessee within a period of 60 days after the filing of the objections, the lease may be terminated by either party upon giving 30 days' notice to the other party; *however*, the lessor's right to terminate the lease shall be suspended by the lessee's filing of a notice of appeal pursuant to section 29 of

this lease, and if the lessee is ultimately successful in his appeal, the lease shall continue without the change in the provisions, the imposition of which, the lessee appealed. If the lessee is unsuccessful in his appeal and, within 30 days after receipt of the decision on appeal notifies the lessor that he accepts the decision rendered upon such appeal, then the lease shall continue as amended by the decision.

(c) If the lessee files objections to the proposed readjusted conditions, the existing conditions, except those concerning royalties, shall remain in effect until there has been an agreement between the lessor and the lessee on the new conditions to be incorporated in the lease, or until the lease is terminated; *however,* the readjusted royalty provisions shall be effective until there is either agreement between the lessor and the lessee or until the lease is terminated. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

Sec. 24. DELIVERY OF PREMISES. Upon termination of this lease for any reason, or relinquishment of a part of this lease, lessee shall deliver to the lessor in good order and condition all or the appropriate part of the leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations for the completion of operations and abandonment.
Sec. 25. PROPRIETARY INFORMATION - Geological and geophysical data and information, including maps, trade secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2 and other applicable regulations.

Sec. 26. LESSEE'S LIABILITY TO LESSOR -

(a) The lessee shall be liable to the United States for any damages suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damages is caused by employees of

the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damages occurred.

Sec. 27. INSPECTION AND INVESTIGATIONS -
(a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept current and in such manner that the books and records can be readily checked at the mine, upon request, by the Mining Supervisor or his representative at the place where they are customarily maintained.

(b) The lessee shall permit any duly authorized officer or representative of the lessor at any reasonable time (1) to inspect or investigate the leased lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) copy, and make extracts from any such books and records.

Sec. 28. UNLAWFUL INTEREST. No member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(3), shall hold any share or part in this lease or derive any benefit therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, (62 Stat. 702, as amended, 18 U.S.C. Sections 431-433), relating to contracts, enter into and form a part of this lease insofar as they may be applicable.

Sec. 29. APPEALS. The lessee shall have the right of appeal (a) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management, (b) under 30 CFR Part 290 from an action, order, or decision of any official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior or arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.

Sec. 30. SPECIAL STATUTES - The lessee shall comply with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 7401 et seq.).

Sec. 31. SPECIAL STIPULATIONS -

1. The lessee will comply with all state laws and regulations concerning coal mining, including, but not limited to, laws and regulations pertaining to air and water quality and surface reclamation.

2. The permitting of mining operations on the lease is subject to the possible designation of any portion of the lease as unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations under the Mineral Leasing Act of 1920, as amended, and the Surface Mining Control and Reclamation Act of 1977, (30 CFR Part 700 and 43 CFR Part 3400) in effect at the time of action on the mine plan permit.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number NM 050405 Okla
Date of Lease December 1, 1959

COAL LEASE READJUSTMENT

This lease between the United States of America (the lessor) through the Bureau of Land Management (BLM) and Lone Star Steel Company, Lone Star, Texas 75668 (lessee) is readjusted, effective as of April 1, 1981 .

Sec. 1. STATUTES AND REGULATIONS - This lease readjustment is issued pursuant and subject to the terms and provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sections 181-263, hereinafter referred to as the Act, and of the Surface Mining Control and Reclamation Act of 1977. This lease is also subject to all regulations of the Secretary of the Interior (including but not limited to, 30 CFR Part 211 and 43 CFR Group 3000), and to all regulations of the Secretary of Energy promulgated pursuant to Section 302 of the Department of Energy Organization Act which are now or hereafter in force, and which are made a part hereof. No amendment to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease.

Sec. 2. RIGHTS OF LESSEE. The lessor, in consideration of the rents and royalties and other conditions hereinafter set forth, hereby grants to the lessee the exclusive right and privilege to mine and dispose of all coal in the following-described tracts (lease lands) situated in the State of Oklahoma:

T. 8 N., R. 24 E., Indian Mer., Le Flore County, Oklahoma

Sec. 22: $SE^{1/4}$
Sec. 23: $S^{1/2}$
Sec. 24: $S^{1/4}SE^{1/4}$

Sec. 25: $NE^{1/4}NE^{1/4}$
Sec. 26: $N^{1/2}$, $NE^{1/4}$
T. 8 N., R. 24 E., Indian Mer.,
Sec. 19: Lots 3,4, $E^{1/2}SW^{1/4}$, $SE^{1/4}$
Sec. 30: Lot 1, $NE^{1/4}$, $NW^{1/4}$, $N^{1/2}NE^{1/4}$

containing 1,116.17 acres, more or less, with the right to construct all such work[s *sic*], buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted for so long as this lease remains in full force and effect under any provisions of the law and the applicable regulations thereunder.

Sec. 3. DILIGENCE. The lessee shall engage in the diligent development of the coal resources subject to the lease by timely preparation for and initiation of production of coal from this lease or from the Logical Mining Unit (LMU) of which this lease is a part so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in the regulations (43 CFR 3475.4). After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands as defined in the regulations.

Sec. 4 BONDS. The lessee shall file with the appropriate BLM office a lease bond in the amount of $5,000, for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other items of this lease, the regulations and the Act. An increase in the amount of the lease bond may be required by the lessor at any time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL. An annual rental of $3.00 for each acre of fraction thereof shall be paid in advance on or before the anniversary date of this lease. Rentals under this lease shall be payable for each and every year during the continuance of the lease. Rentals paid for any year prior to this readjustment shall be credited against royalties for that year. Rentals due and payable on or after the lease year commencing on the effective date of this readjustment may not be credited against royalties (43 CFR 3473.3-1).

Sec. 6. PRODUCTION ROYALTY. The lessee shall pay a production royalty of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground mining methods. The value of coal shall be determined as set forth in the regulations. Production royalties paid for a calendar month shall be reduced by the amount of any advance royalties paid under this lease to the extent that such advance royalties have not been used to reduce production royalties in a previous month. Production royalties shall be payable the final day of the month succeeding the calendar month in which coal is mined.

Sec. 7. ADVANCE ROYALTY. Upon request by the lessee the mining Supervisor may accept, for a total of not more than ten years, the payment of advance royalties in lieu of the condition of continued operation for any particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and the mining Supervisor, which shall be made a part of the lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations. The advance royalty shall be based on a percent of value of a minimum number of tons which shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of approval of the mining and reclamation plans.

Sec. 8. METHOD OF PAYMENTS. The lessee shall make rental payments to the appropriate BLM office until either

production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the appropriate office of the Mining Supervisor. All remittances to BLM shall be made payable to the Bureau of Land Management; those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLORATION PLAN. As specified in the regulations, the lessee shall submit an exploration plan before conducting any exploration on the leased lands, except casual use, between the effective date of this lease and the date of approval of the mining plan. The lessee shall not commence exploration without an approved exploration plan. Thereafter, the lessee shall conduct all exploration in accordance with the approved exploration plan.

Sec. 10. MINING PLAN. In accordance with the regulations in 30 CFR 211, 700 and 800, if the Lessee has not yet submitted a mining plan, he must do so within three years after the effective date of this readjustment. Unless or until the mining plan has been approved, the Lessee shall not conduct any operations on the leased lands except casual use or exploration, if an exploration plan has been approved. Thereafter, the Lessee shall conduct all operations in accordance with the approved mining plan.

Sec. 11. LOGICAL MINING UNIT (LMU) - This lease is automatically considered to be an LMU and may be combined with other land, including other Federal leaseholds and non-Federal interests in coal, to form a larger LMU. The mining plan for such enlarged LMU must include a production schedule that provides for the mining of all the LMU reserves, both Federal and non-Federal, in a period of not more than 40 years from the date of the approval of the plan. The definition of LMU and LMU reserves and other conditions applicable to them are set forth in the regulations (43 CFR 3400.0-5).

Sec. 12. OPERATIONS ON LEASED LANDS. In accordance with conditions of this lease, the exploration and

mining plans, the regulations and the Act, the lessee shall exercise reasonable diligence, skill, and care in all operations on leased lands. The lessee's obligations shall include, but not be limited to the following:

(a) The lessee shall conduct all operations on the leased lands so as to avoid injury to life, health, or property.

(b) The lessee shall conduct operations in such a manner as may be needed to avoid or, where avoidance is impracticable, to minimize and where practicable, to repair damage to: (1) any forage and timber growth on Federal or non-Federal lands in the vicinity of the leased lands; (2) crops, including forage and timber, or improvements of a surface owner; or (3) improvements, whether owned by the United States or by its permittees, licensees, or lessees. The lessor must approve the steps to be taken and the restoration to be made in the event of the occurrence of damage described in this subsection.

(c) The lessee shall minimize to the maximum extent possible wasting of the coal deposits and other mineral and nonmineral resources, including but not limited to, surface resources which may be found in, upon, or under such lands.

Sec. 13. CULTURAL RESOURCES -

(a) Before the approval of a mining plan, the authorized officer may require a survey of all or part of the leased land to provide an inventory of any historical, cultural archeological, and paleontological values. The survey shall be conducted by a qualified professional archeologist, approved by the authorized officer, and a report of the survey shall be submitted to the authorized officer. The approval of an exploration or mining plan or the continuation of lease operations may be conditioned on the approval of the survey report and the approval of measures to protect the historical, cultural, archeological and paleontological values. The cost of any survey or measures to protect such values discovered as a result of the survey shall be borne by the lessee, and items and features of historical, cultural, archeological, or

paleontological value shall remain under the jurisdiction of the United States.

(b) If any items or features of historical, cultural, archeological or paleontological value are discovered during lease operations, the lessee shall immediately notify the Mining Supervisor and shall not disturb such items or features until the Mining Supervisor issues instructions. If the lessee is ordered to take measures to protect any items or features of historical, cultural, archeological, or paleontological value discovered during lease operations, the cost of the measures shall be borne by the lessor, and such items and features shall remain under the jurisdiction of the United States.

Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS -

(a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, licenses, permits, easements, or rights-of-way, including leases for the development of minerals other than coal under the Act. The lessor may authorize any other uses of the leased lands that do not unnecessarily interfere with the exploration and mining operations of the lessee, and the lessee shall make all reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right (1) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or (2) to dispose of any resource in such lands if such deposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

Sec. 15. EQUAL OPPORTUNITY CLAUSE - The lessee will comply with all provisions of Executive Order No. 11246

of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor. See attachment.

Sec. 16. CERTIFICATION OF NONSEGREGATED FACILITIES - By entering into this lease, the lessee certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The lessee agrees that a breach of this certification is a violation of the Equal Opportunity clause of this lease. As used in this certification the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Lessee further agrees that (except where lessee has obtained identical certifications from proposed contractors and subcontractors for specific time periods) lessee will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts succeeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that lessee will retain such certifications in lessee's files; that lessee will forward the following notice to such proposed contractors and subcontractors (except where proposed contractor and subcontractor has submitted identical certifications for specific time period). Notice is to be provided by lessee to prospective contractors and subcontractors of requirements for certification of nonsegregated facilities. A *Certification of Nonsegregated Facilities* as required by the May 9, 1967, order (32 F.R. 7439 May 19, 1967) on *Elimination of Segregated Facilities* by the Secretary of Labor, must be submitted prior to the award of a contract exceeding $10,000 which is not exempt from provisions of the Equal Opportunity clause. Certification may be submitted either for

each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

Sec. 17. EMPLOYMENT PRACTICES - The lessee shall pay all wages due persons employed on the leased lands at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employees complete freedom to purchase goods and service of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day for underground workers, except in the case of emergency. The lessee shall employ no person under the age of 16 years in any mines below the surface. If the laws of the State in which the mine is situated provides for a minimum age restriction for mining below the surface, other than the requirements of Federal law, the laws of the State shall prevail.

Sec. 18. MONOPOLY AND FAIR PRACTICES - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 187 and 189) necessary to insure that any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such orders and regulations shall upon promulgation be binding upon the lessee.

Sec. 19. ASSIGNMENT.
This lease may be assigned, upon approval of the authorized officer in accordance with the provisions of 43 CFR subpart 3453. An assignment will become effective on the first day of the month following approval by the authorized officer or, if the assignee requests, the first day of the month of approval.

Sec. 20. RELINQUISHMENT OF LEASE. The lessee may file a request to relinquish all or any legal subdivision of this lease. The request shall be filed in duplicate with the authorized officer. The authorized officer shall approve the relinquishment if he determines that the lessee has complied

with the requirements of the lease, the exploration and mining plans, the regulations and the Act. Upon approval, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to pay all accrued rentals and royalties and to comply with all other requirements of the lease, the regulations and the Act.

Sec. 21. NONCOMPLIANCE. Any failure to comply with the conditions of this lease, the approved exploration and mining and reclamation plans, the regulations, or the Act shall be dealt with in accordance with the procedures set forth in the regulations.

Sec. 22. WAIVER OF CONDITIONS. The lessor reserves the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS -

(a) The lease is subject to reasonable readjustment of any conditions of the lease, including royalty rates, at the end of this readjustment period on December 1, 1989 , and subject to readjustment at the end of each 10-year period thereafter.The lessor shall notify the lessee whether he intends to readjust conditions and, if he intends to readjust, the nature of the readjustments. The lessor shall give notice 120 days before the end of this readjustment period as to whether the lease terms will be readjusted. Unless the lessee, within 60 days after the receipt of the proposed readjusted conditions files with the lessor an objection or relinquishes the lease as of the effective date of the readjustment, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions, and agreement cannot be reached between the

lessor and the lessee within a period of 60 days after the filing of the objections, the lease may be terminated by either party upon giving 30 days' notice to the other party; *however,* the lessor's right to terminate the lease shall be suspended by the lessee's filing of a notice of appeal pursuant to section 29 of this lease, and if the lessee is ultimately successful in his appeal, the lease shall continue without the change in the provisions, the imposition of which, the lessee appealed. If the lessee is unsuccessful in his appeal and, within 30 days after receipt of the decision on appeal notifies the lessor that he accepts the decision rendered upon such appeal, then the lease shall continue as amended by the decision.

(c) If the lessee files objections to the proposed readjusted conditions, the existing conditions, except those concerning royalties, shall remain in effect until there has been an agreement between the lessor and the lessee on the new conditions to be incorporated in the lease, or until the lease is terminated; *however,* the readjusted royalty provisions shall be effective until there is either agreement between the lessor and the lessee or until the lease is terminated. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

Sec. 24. DELIVERY OF PREMISES. Upon termination of this lease for any reason, or relinquishment of a part of this lease, lessee shall deliver to the lessor in good order and condition all or the appropriate part of the leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations for the completion of operations and abandonment.

Sec. 25. PROPRIETARY INFORMATION - Geological and geophysical data and information, including maps, trade secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2 and other applicable regulations.

Sec. 26. LESSEE'S LIABILITY TO LESSOR -

(a) The lessee shall be liable to the United States for any damages suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damages is caused by employees of the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damages occurred.

Sec. 27. INSPECTION AND INVESTIGATIONS -

(a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept current and in such manner that the books and records can be readily checked at the mine at the place where they are Supervisor or his representative upon request, by the Mining customarily maintained.

(b) The lessee shall permit any duly authorized officer or representative of the lessor at any reasonable time (1) to inspect or investigate the leased lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) copy, and make extracts from any such books and records.

Sec. 28. UNLAWFUL INTEREST. No member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(3), shall hold any share or part in this lease

or derive any benefit therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, (62 Stat. 702, as amended, 18 U.S.C. Sections 431-433), relating to contracts, enter into and form a part of this lease insofar as they may be applicable.

Sec. 29. APPEALS. The lessee shall have the right of appeal (a) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management, (b) under 30 CFR Part 290 from an action, order, or decision of any official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior or arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.

Sec. 30. SPECIAL STATUTES - The lessee shall comply with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 7401 et seq.).

Sec. 31. SPECIAL STIPULATIONS -

1. The lessee will comply with all state laws and regulations concerning coal mining, including, but not limited to, laws and regulations pertaining to air and water quality and surface reclamation.

2. The permitting of mining operations on the lease is subject to the possible designation of any portion of the lease as unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations under the Mineral Leasing Act of 1920, as amended, and the Surface Mining Control and Reclamation Act of 1977, (30 CFR Part 700 and 43 CFR Part 3400) in effect at the time of action on the mine plan permit.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number NM 050406 Okla
Date of Lease December 1, 1959

COAL LEASE READJUSTMENT

This lease between the United States of America (the lessor) through the Bureau of Land Management (BLM) and Lone Star Steel Company, Lone Star, Texas 75668 (lessee) is readjusted, effective as of April 1, 1981 .

Sec. 1. STATUTES AND REGULATIONS - This lease readjustment is issued pursuant and subject to the terms and provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sections 181-263, hereinafter referred to as the Act, and of the Surface Mining Control and Reclamation Act of 1977. This lease is also subject to all regulations of the Secretary of the Interior (including but not limited to, 30 CFR Part 211 and 43 CFR Group 3000), and to all regulations of the Secretary of Energy promulgated pursuant to Section 302 of the Department of Energy Organization Act which are now or hereafter in force, and which are made a part hereof. No amendment to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease.

Sec. 2. RIGHTS OF LESSEE. The lessor, in consideration of the rents and royalties and other conditions hereinafter set forth, hereby grants to the lessee the exclusive right and privilege to mine and dispose of all coal in the following-described tracts (lease lands) situated in the State of Oklahoma:

T. 5 N., R. 15 E., Indian Meridian, Pittsburg County, Oklahoma

Sec. 21: $SW^{1/4}SW^{1/4}$
26: $SW^{1/4}NE^{1/4}$, $W^{1/2}SE^{1/4}$, $SW^{1/4}$, $S^{1/2}NW^{1/4}$, $NW^{1/4}NW^{1/4}$

27: All
28: All
29: $NE^{1/4}$ $NE^{1/4}$,$S^{1/2}NE^{1/4}$,$S^{1/2}$
Sec. 30: Lot 4, $SE^{1/4}$ $NE^{1/4}$,
$E^{1/2}SE^{1/4}$,$SW^{1/4}SE^{1/4}$,$SE^{1/4}SW^{1/4}$

containing 2,400.31 acres, more or less, with the right to construct all such work[s *sic*], buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted for so long as this lease remains in full force and effect under any provisions of the law and the applicable regulations thereunder.

Sec. 3. DILIGENCE. The lessee shall engage in the diligent development of the coal resources subject to the lease by timely preparation for and initiation of production of coal from this lease or from the Logical Mining Unit (LMU) of which this lease is a part so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in the regulations (43 CFR 3475.4). After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands as defined in the regulations.

Sec. 4 BONDS. The lessee shall file with the appropriate BLM office a lease bond in the amount of $5,000, for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other items of this lease, the regulations and the Act. An increase in the amount of the lease bond may be required by the lessor at any time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL. An annual rental of $3.00 for each acre of fraction thereof shall be paid in advance on or before the anniversary date of this lease. Rentals under this lease shall be payable for each and every year during the continuance of the lease. Rentals paid for any year prior to this readjustment shall be credited against royalties for that year. Rentals due and payable on or after the lease year commencing on the effective date of this readjustment may not be credited against royalties (43 CFR 3473.3-1).

Sec. 6. PRODUCTION ROYALTY. The lessee shall pay a production royalty of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground mining methods. The value of coal shall be determined as set forth in the regulations. Production royalties paid for a calendar month shall be reduced by the amount of any advance royalties paid under this lease to the extent that such advance royalties have not been used to reduce production royalties in a previous month. Production royalties shall be payable the final day of the month succeeding the calendar month in which coal is mined.

Sec. 7. ADVANCE ROYALTY. Upon request by the lessee the mining Supervisor may accept, for a total of not more than ten years, the payment of advance royalties in lieu of the condition of continued operation for any particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and the mining Supervisor, which shall be made a part of the lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations. The advance royalty shall be based on a percent of value of a minimum number of tons which shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the date of approval of the mining and reclamation plans.

Sec. 8. METHOD OF PAYMENTS. The lessee shall make rental payments to the appropriate BLM office until either

production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the appropriate office of the Mining Supervisor. All remittances to BLM shall be made payable to the Bureau of Land Management; those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLORATION PLAN. As specified in the regulations, the lessee shall submit an exploration plan before conducting any exploration on the leased lands, except casual use, between the effective date of this lease and the date of approval of the mining plan. The lessee shall not commence exploration without an approved exploration plan. Thereafter, the lessee shall conduct all exploration in accordance with the approved exploration plan.

Sec. 10. MINING PLAN. In accordance with the regulations in 30 CFR 211, 700 and 800, if the Lessee has not yet submitted a mining plan, he must do so within three years after the effective date of this readjustment. Unless or until the mining plan has been approved, the Lessee shall not conduct any operations on the leased lands except casual use or exploration, if an exploration plan has been approved. Thereafter, the Lessee shall conduct all operations in accordance with the approved mining plan.

Sec. 11. LOGICAL MINING UNIT (LMU) - This lease is automatically considered to be an LMU and may be combined with other land, including other Federal leaseholds and non-Federal interests in coal, to form a larger LMU. The mining plan for such enlarged LMU must include a production schedule that provides for the mining of all the LMU reserves, both Federal and non-Federal, in a period of not more than 40 years from the date of the approval of the plan. The definition of LMU and LMU reserves and other conditions applicable to them are set forth in the regulations (43 CFR 3400.0-5).

Sec. 12. OPERATIONS ON LEASED LANDS. In accordance with conditions of this lease, the exploration and

mining plans, the regulations and the Act, the lessee shall exercise reasonable diligence, skill, and care in all operations on leased lands. The lessee's obligations shall include, but not be limited to the following:

(a) The lessee shall conduct all operations on the leased lands so as to avoid injury to life, health, or property.

(b) The lessee shall conduct operations in such a manner as may be needed to avoid or, where avoidance is impracticable, to minimize and where practicable, to repair damage to: (1) any forage and timber growth on Federal or non-Federal lands in the vicinity of the leased lands; (2) crops, including forage and timber, or improvements of a surface owner; or (3) improvements, whether owned by the United States or by its permittees, licensees, or lessees. The lessor must approve the steps to be taken and the restoration to be made in the event of the occurrence of damage described in this subsection.

(c) The lessee shall minimize to the maximum extent possible wasting of the coal deposits and other mineral and nonmineral resources, including but not limited to, surface resources which may be found in, upon, or under such lands.

Sec. 13. CULTURAL RESOURCES -

(a) Before the approval of a mining plan, the authorized officer may require a survey of all or part of the leased land to provide an inventory of any historical, cultural archeological, and paleontological values. The survey shall be conducted by a qualified professional archeologist, approved by the authorized officer, and a report of the survey shall be submitted to the authorized officer. The approval of an exploration or mining plan or the continuation of lease operations may be conditioned on the approval of the survey report and the approval of measures to protect the historical, cultural, archeological and paleontological values. The cost of any survey or measures to protect such values discovered as a result of the survey shall be borne by the lessee, and items and features of historical, cultural, archeological, or

paleontological value shall remain under the jurisdiction of the United States.

(b) If any items or features of historical, cultural, archeological or paleontological value are discovered during lease operations, the lessee shall immediately notify the Mining Supervisor and shall not disturb such items or features until the Mining Supervisor issues instructions. If the lessee is ordered to take measures to protect any items or features of historical, cultural, archeological, or paleontological value discovered during lease operations, the cost of the measures shall be borne by the lessor, and such items and features shall remain under the jurisdiction of the United States.

Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS -

(a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, licenses, permits, easements, or rights-of-way, including leases for the development of minerals other than coal under the Act. The lessor may authorize any other uses of the leased lands that do not unnecessarily interfere with the exploration and mining operations of the lessee, and the lessee shall make all reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right (1) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or (2) to dispose of any resource in such lands if such deposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

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of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor. See attachment.

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each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

Sec. 17. EMPLOYMENT PRACTICES - The lessee shall pay all wages due persons employed on the leased lands at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employees complete freedom to purchase goods and service of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day for underground workers, except in the case of emergency. The lessee shall employ no person under the age of 16 years in any mines below the surface. If the laws of the State in which the mine is situated provides for a minimum age restriction for mining below the surface, other than the requirements of Federal law, the laws of the State shall prevail.

Sec. 18. MONOPOLY AND FAIR PRACTICES - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 187 and 189) necessary to insure that any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such orders and regulations shall upon promulgation be binding upon the lessee.

Sec. 19. ASSIGNMENT.
This lease may be assigned, upon approval of the authorized officer in accordance with the provisions of 43 CFR subpart 3453. An assignment will become effective on the first day of the month following approval by the authorized officer or, if the assignee requests, the first day of the month of approval.
Sec. 20. RELINQUISHMENT OF LEASE. The lessee may file a request to relinquish all or any legal subdivision of this lease. The request shall be filed in duplicate with the authorized officer. The authorized officer shall approve the relinquishment if he determines that the lessee has complied with the requirements of the lease, the exploration and mining

plans, the regulations and the Act. Upon approval, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to pay all accrued rentals and royalties and to comply with all other requirements of the lease, the regulations and the Act.

Sec. 21. NONCOMPLIANCE. Any failure to comply with the conditions of this lease, the approved exploration and mining and reclamation plans, the regulations, or the Act shall be dealt with in accordance with the procedures set forth in the regulations.

Sec. 22. WAIVER OF CONDITIONS. The lessor reserves the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS -

(a) The lease is subject to reasonable readjustment of any conditions of the lease, including royalty rates, at the end of this readjustment period on December 1, 1989, and subject to readjustment at the end of each 10-year period thereafter.The lessor shall notify the lessee whether he intends to readjust conditions and, if he intends to readjust, the nature of the readjustments. The lessor shall give notice 120 days before the end of this readjustment period as to whether the lease terms will be readjusted. Unless the lessee, within 60 days after the receipt of the proposed readjusted conditions files with the lessor an objection or relinquishes the lease as of the effective date of the readjustment, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions, and agreement cannot be reached between the lessor and the lessee within a period of 60 days after the filing

of the objections, the lease may be terminated by either party upon giving 30 days' notice to the other party; *however*, the lessor's right to terminate the lease shall be suspended by the lessee's filing of a notice of appeal pursuant to section 29 of this lease, and if the lessee is ultimately successful in his appeal, the lease shall continue without the change in the provisions, the imposition of which, the lessee appealed. If the lessee is unsuccessful in his appeal and, within 30 days after receipt of the decision on appeal notifies the lessor that he accepts the decision rendered upon such appeal, then the lease shall continue as amended by the decision.

(c) If the lessee files objections to the proposed readjusted conditions, the existing conditions, except those concerning royalties, shall remain in effect until there has been an agreement between the lessor and the lessee on the new conditions to be incorporated in the lease, or until the lease is terminated; *however*, the readjusted royalty provisions shall be effective until there is either agreement between the lessor and the lessee or until the lease is terminated. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

Sec. 24. DELIVERY OF PREMISES. Upon termination of this lease for any reason, or relinquishment of a part of this lease, lessee shall deliver to the lessor in good order and condition all or the appropriate part of the leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations for the completion of operations and abandonment.

Sec. 25. PROPRIETARY INFORMATION - Geological and geophysical data and information, including maps, trade secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2 and other applicable regulations.

Sec. 26. LESSEE'S LIABILITY TO LESSOR -
(a) The lessee shall be liable to the United States for any damages suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damages is caused by employees of the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damages occurred.

Sec. 27. INSPECTION AND INVESTIGATIONS -
(a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept current and in such manner that the books and records can be readily checked at the mine, upon request, by the Mining Supervisor or his representative at the place where they are customarily maintained.

(b) The lessee shall permit any duly authorized officer or representative of the lessor at any reasonable time (1) to inspect or investigate the leased lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) copy, and make extracts from any such books and records.

Sec. 28. UNLAWFUL INTEREST. No member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(3), shall hold any share or part in this lease

or derive any benefit therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, (62 Stat. 702, as amended, 18 U.S.C. Sections 431-433), relating to contracts, enter into and form a part of this lease insofar as they may be applicable.

Sec. 29. APPEALS. The lessee shall have the right of appeal (a) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management, (b) under 30 CFR Part 290 from an action, order, or decision of any official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior or arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.

Sec. 30. SPECIAL STATUTES - The lessee shall comply with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 7401 et seq.).

Sec. 31. SPECIAL STIPULATIONS -
1. The lessee will comply with all state laws and regulations concerning coal mining, including, but not limited to, laws and regulations pertaining to air and water quality and surface reclamation.
2. The permitting of mining operations on the lease is subject to the possible designation of any portion of the lease as unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations under the Mineral Leasing Act of 1920, as amended, and the Surface Mining Control and Reclamation Act of 1977, (30 CFR Part 700 and 43 CFR Part 3400) in effect at the time of action on the mine plan permit.

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UNITED STATES DEPART
BUREAU OF LAN IENT OF THE INTERIOR
MANAGEMENT

Serial Number
NM059996OK
Date of Lease
April 1, 1960

COAL LEASE R
ADJUSTMENT

This lease between the United tates of America (the lessor)
through the Bureau of Land nagement (BLM) and Lone
Star Steel Company, P.O. B 35888, Dallas, TX 75235
(lessee) is readjusted, effective s of January 1, 1982 .

Sec. 1. STATUTES AND F GULATIONS - This lease
readjustment is issued pursua and subject to the terms and
provisions of the Mineral Lea g Act of February 25, 1920,
41 Stat. 437, as amended, U.S.C. Sections 181-263,
hereafter referred to as the A and of the Surface Mining
Control and Reclamation Ac f 1977, 30 U.S.C. Section
1201 et seq., the Federal Coa easing Amendments Act of
1976, as amended, 90 Stat. 3-1092, and in the case of
acquired lands, the Mineral Le g Act for Acquired Lands of
August 7, 1947, as amende 30 U.S.C. 351-359 et seq.
This lease is also subject to al gulations of the Secretary of
the Interior (including but not ited to, 30 CFR Part 211 and
Chapter VII and 43 CFR Gro 3400), and to all regulations
of the Secretary of Energy p ulgated pursuant to Section
302 of the Department of Ener Organization Act of 1977, 42
U.S.C. Section 7152, which now in force or (except as
expressly limited herein) her ter in force, and all of such
regulations are made a part eof. No amendment to the
regulations made subsequent he effective date hereof shall
alter the rental and production alty requirements in sections
5 and 6 of this lease until the readjustment of this lease.

Sec. 2. RIGHTS OF LESSE
of the rents and royalties and The lessor, in consideration
forth, hereby grants to the er conditions hereinafter set
see the exclusive right and

privilege to mine and dispose of all coal in the following-described tracts (lease lands) situated in the State of Oklahoma

T. 5 N., R. 16 E. IM
Sec. 1: $S^{1/2}S^{1/2}$

T. 5 N., R. 17 E., IM
Sec 2: $NW^{1/4}$ $SW^{1/4}$
Sec 3: $N^{1/2}$ $S^{1/2}$
Sec 4: $S^{1/2}NW^{1/4}SW^{1/4}$;$N^{1/2}SW^{1/4}SW^{1/4}$
Sec 5: Lots 1 and 2 of Townsite Addition 17: $SE^{1/4}SW^{1/4}$; $SW^{1/4}SE^{1/4}$; $S^{1/2}NE^{1/4}$ $SE^{1/4}$; $N^{1/2}SE^{1/4}SE^{1/4}$;
Sec 6: Lot 7; $SE^{1/4}SW^{1/4}$; Lots 3, 4, 5, 6, 7, 8, and 9 of Townsite Addition 17.

containing 718.88 acres, more or less, with the right to construct all such work[s *sic*], buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Sec. 3. DILIGENCE. The lessee shall engage in the diligent development of the coal resources subject to the lease by timely preparation for and initiation of production of coal from this lease or from the Logical Mining Unit (LMU) of which this lease is a part so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in the regulations (43 CFR 3475.4). After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands. The terms diligent development and continued operation are defined in the applicable regulations in Titles 10, 30 and 43 of the Code of Federal Regulations.

Sec. 4 BONDS. The lessee shall file with the appropriate Bureau of Land Management office a lease bond in the amount of $5,000, for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other items of this lease, the regulations and the Act (except for reclamation within this area covered by a surface mining permit issued under the permanent regulatory authority) and, if appropriate, for the protection of the surface owners on the leased lands. An increase in the amount of the lease bond may be required by the lessor at any time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL. An annual rental of $3.00 for each acre of fraction thereof shall be paid in advance on or before the anniversary date of this lease. Rentals under this lease shall be payable for each and every year during the continuance of the lease. Rentals paid for any lease year commencing prior to the effective date of this readjustment shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of this readjustment may not be credited against royalties (43 CFR 3473.3-1).

Sec. 6. PRODUCTION ROYALTY. The lessee shall pay a production royalty of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground mining methods. The value of coal shall be determined as set forth in the 30 CFR 211. Production royalties paid for a calendar month shall be reduced by the amount of any advance royalties paid under this lease to the extent that such advance royalties have not been used to reduce production royalties in a previous month. Production royalties shall be payable the final day of the month succeeding the calendar month in which coal is sold, unless otherwise specified in 30 CFR 211.

Sec. 7. ADVANCE ROYALTY. Upon request by the lessee the Deputy Conservation Manager--Mining may accept, for a total of not more than ten years, the payment of advance royalties in lieu of the condition of continued operation for any

particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and the Deputy Conservation Manager-Mining, which shall be made a part of the lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations. The advance royalty shall be based on a percent of value of a minimum number of tons which shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976.

Sec. 8. METHOD OF PAYMENTS. The lessee shall make rental payments to the appropriate BLM office until either production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the appropriate office of the U.S. Geological Survey. All remittances to BLM shall be made payable to the Bureau of Land Management; those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLORATION PLAN - The lessee shall not commence any exploration, except casual use, on the leased lands without an approved exploration plan. Exploration plans for leased lands covered by an approved mining permit shall be submitted to the Regional Director of the Office of Surface Mining in accordance with the regulations in 30 CFR Chapter VII. Exploration plans for leased lands not covered by an approved mining permit shall be submitted to the District Mining Supervisor in accordance with the regulations in 30 CFR 211.

Sec. 10. MINING PLAN. In accordance with the regulations in 30 CFR 211, and Chapter VII, if the lessee has not yet submitted a mining plan, he must do so within three years after the effective date of this readjustment. Mining operations shall not commence until after the mining and reclamation plan is approved. The mining and reclamation shall be conducted in accordance with the approved mining and reclamation plan. Exploration activities which are not included in the approved

mining and reclamation plan require submittal of exploration plans in accordance with Section 9 of this lease.

Sec. 11. LOGICAL MINING UNIT (LMU) - This lease is automatically considered to be an LMU. This LMU may be enlarged, adjusted or diminished in accordance with the applicable regulations in Titles 10, 30, and 43 of the Code of Federal Regulations. The mining plan for the LMU shall require that the reserves of the LMU will be mined within a period of 40 years in accordance with 30 CFR 211 and 43 CFR 3400.0-5. The definition of LMU and LMU reserves and other applicable conditions are set forth in the regulations in 43 CFR 3400.0-5 and 3475, 30 CFR 211, and Title 10 of the Code of Federal Regulations.

Sec. 12. OPERATIONS ON LEASED LANDS - (a) in accordance with conditions of this lease, the exploration and mining and reclamation plans, the permit issued pursuant to 30 CFR Chapter VII, and all applicable acts and regulations, the lessee shall exercise reasonable diligence, skill, and care in all operations on leased lands. (b) The lessee shall minimize to the maximum extent possible wasting of the coal deposits and other mineral and nonmineral resources, including but not limited to, surface resources which may be found in, upon, or under such lands.

Sec. 13. SPECIAL STATUTES - The lessee shall comply with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 7401 et seq.).

Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS - (a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, licenses, permits, easements, or rights-of-way, including leases for the development of minerals other than coal under the Act. The lessor may authorize any other uses of the leased lands that do not unnecessarily interfere with the exploration and mining operations of the lessee, and the lessee shall make all

reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right (i) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or (ii) to dispose of any resource in such lands if such deposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

Sec. 15. EQUAL OPPORTUNITY CLAUSE - The lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor.

Sec. 16. CERTIFICATION OF NONSEGREGATED FACILITIES - By entering into this lease, the lessee certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The lessee agrees that a breach of this certification is a violation of the Equal Opportunity clause of this lease. As used in this certification the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Lessee further agrees that (except where lessee has obtained identical certifications from proposed contractors and subcontractors for specific time periods) lessee will obtain identical certifications

from proposed contractors and subcontractors prior to award of contracts or subcontracts succeeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that lessee will retain such certifications in lessee's files; that lessee will forward the following notice to such proposed contractors and subcontractors (except where proposed contractor and subcontractor has submitted identical certifications for specific time period) Notice to prospective contractors and subcontractors of requirements for certification of nonsegregated facilities. A *Certification of Nonsegregated Facilities* as required by the May 9, 1967, order (32 F.R. 7439 May 19, 1967) on *Elimination of Segregated Facilities* by the Secretary of Labor, must be submitted prior to the award of a contract exceeding $10,000 which is not exempt from provisions of the Equal Opportunity clause. Certification may be submitted either for each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

Sec. 17. EMPLOYMENT PRACTICES - The lessee shall pay all wages due persons employed on the leased lands at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employees complete freedom to purchase goods and service of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day for underground workers, except in the case of emergency. The lessee shall employ no person under the age of 16 years in any mines below the surface. If the laws of the State in which the lands are situated conflict with this paragraph, then the State laws apply.

Sec. 18. MONOPOLY AND FAIR PRACTICES - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 187 and 189) necessary to insure that any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such orders and regulations shall upon promulgation be binding upon the lessee.

Sec. 19. TRANSFERS -

- ■ This lease may be transferred in whole or in part to another person, association or corporation qualified under 43 CFR 3472.1-1 to hold a lease.
- ❑ This lease may only be transferred in whole or in part to another public body, or to a person who will mine the coal on behalf of and for the use of the public body, or to a person for the limited purpose of creating a security interest in favor of a lender who agrees to be obligated to mine the coal on behalf of the public body. The transferee must be qualified under 43 CFR 3472.
- ❑ This lease may only be transferred in whole or in part to other small businesses qualifying under 13 CFR 121 and 43 CFR 3472.2-2(c).

Any transfer of this lease in whole or in part is subject to the procedures and requirements for approval in the relevant regulations in 43 CFR 3400. A transfer will become effective on the first day of the month following its approval by the authorized officer, or, if the transferee requests, the first day of the month of approval.

Sec. 20. RELINQUISHMENT OF LEASE - The lessee may file a relinquishment of the entire lease, a legal subdivision or aliquot part thereof, but not less than 10 acres, or any bed of the coal deposits therein. The relinquishment shall be filed in triplicate with the authorized officer. Upon the determination by the authorized officer that the public interest shall not be impaired, that all accrued rentals and royalties have been paid and that all of the obligations of the lease under the regulations and the lease terms have been met, the relinquishment shall be accepted effective the date filed.

Sec. 21. NONCOMPLIANCE - Any failure to comply with the conditions of this lease, the approved exploration and mining and reclamation plans, the regulations, or applicable acts shall be dealt with in accordance with the procedures set forth in the regulations.

Sec. 22. WAIVER OF CONDITIONS - The lessor reserves

the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS - (a) The lease is subject to readjustment on April 1, 1990 and on each 10th year thereafter. In order that the lease may be readjusted as close as possible to the dates when it becomes subject to readjustment the lessor may propose the terms or readjustment of any conditions of this lease, including rental and royalty rates, before the 20th year after the effective date and before each 10-year interval thereafter. The authorized officer shall notify the lessee whether he intends to readjust the terms and conditions of the lease and, if he intends to readjust, the nature of the readjustments in accordance with the regulations in 43 CFR 3451. Unless the lessee, within 60 days after the receipt of the proposed readjusted conditions files with the lessor an objection to the proposed readjusted conditions or relinquishes the lease as of the effective date of the readjustment, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions, the existing conditions shall remain in effect until there has been an agreement between the lessor and lessee on the new conditions to be incorporated in the lease, or until the lessee has exhausted his rights of appeal under Section 29 of this lease, or until the lease is relinquished, except that the authorized officer may provide in the notice of readjusted lease terms that the readjustment or any part thereof is effective pending the outcome of the appeal. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

Sec. 24. DELIVERY OF PREMISES - Upon termination of this lease for any reason, or relinquishment of a part of this lease, lessee shall deliver to the lessor in good order and condition all or the appropriate part of the leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations including 30 CFR 211 and Chapter VII, for the completion of operations and abandonment.

Sec. 25. PROPRIETARY INFORMATION - Geological and geophysical data and information, including maps, trade secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2, 30 CFR 211.6 and other applicable regulations. Total lease reserve figures developed from this information will not be confidential.

Sec. 26. LESSEE'S LIABILITY TO LESSOR - (a) The lessee shall be liable to the United States for any damages suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damages is caused by employees of the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damages occurred.

Sec. 27. INSPECTION AND INVESTIGATIONS - (a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept

current and in such manner that the books and records can be readily checked at the mine, upon request, by the Regional Director or District Mining Supervisor or their representative.

(b) The lessee shall permit any duly authorized officer or representative of the lessor at any reasonable time (1) to inspect or investigate the leased lands, the exploration and mining and reclamation operations, and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) to copy, and make extracts from any such books and records.

Sec. 28. UNLAWFUL INTEREST - No member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(3), shall hold any share or part in this lease or derive any benefit therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. Sections 431-433, relating to contracts enter, into and form a part of this lease insofar as they may be applicable.
Sec. 29. APPEALS - The lessee shall have the right of appeal (a) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management, (b) under 30 CFR Part 290 from an action, order, or decision of any official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior or arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.

Sec. 30. SPECIAL STIPULATIONS -

(a) Cultural Resources (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the authorized office of the

BLM or of the surface managing agency (if different) on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventories at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian or historical architect, as appropriate, approved by the authorized officer of the surface managing agency (BLM if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Office of Surface Mining (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area) and the authorized officer of the BLM or the surface managing agency (if different). The lessee shall undertake measures, in accordance with instructions from the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining area), to protect cultural resources on the leased land. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area).

(2) The lessee shall protect all cultural resource properties within the lease area from lease-related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation plan or exploration plan.

(3) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations under this lease, the lessee shall immediately bring them to the attention of the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area), or the authorized officer of the surface mining permit agency if the Regional

Director, or District Mining Supervisor, as appropriate, is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area). Within two (2) working days of notification, the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area) will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the surface managing agency unless otherwise specified by the authorized office of the BLM or of the surface managing agency (if different).

(5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(b) Paleontological Resources. (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall contact the Bureau of Land Management to determine whether the authorized officer will require the lessee to conduct a paleontological appraisal of the mine plan and adjacent areas, or exploration plan areas, that may be adversely affected by lease-related activities. If the authorized officer determines that one is necessary, the paleontological appraisal shall be conducted by a qualified paleontologist approved by the authorized officer of the surface managing agency (BLM if the surface is privately owned), using the published literature and, where appropriate, field appraisals for determining the possible existence of larger and more conspicuous fossils of scientific significance. A report of the appraisal and recommendations for protecting any larger and more conspicuous fossils of significant scientific interest on the leased lands so identified shall be submitted to the authorized officer of the surface managing agency (BLM if the surface is privately owned). When necessary to protect and collect the larger and more conspicuous fossils of significant scientific

interest on the leased lands, the lessee shall undertake the measures provided in the approval of the mining and reclamation plan or exploration plan.

(2) The lessee shall not knowingly disturb, alter, destroy or take any larger and more conspicuous fossils of significant scientific interest, and shall protect all such fossils in conformance with measures included in the approval of the mining sand reclamation plan or exploration plan.

(3) The lessee shall immediately bring any such fossils that might be altered or destroyed by his operation to the attention of the Regional Director or the District Mining Supervisor, as appropriate. Operations may continue as long as the fossil specimen or specimens would not be seriously damaged or destroyed by the activity. The Regional Director or the District Mining Supervisor, as appropriate, shall evaluate or have evaluated such discoveries brought to his attention and, within five (5) working days, shall notify the lessee what action shall be taken with respect to such discoveries.

(4) All such fossils of significant scientific interest shall remain under the jurisdiction of the United States until ownership is determined under applicable law. Copies of all paleontological resource data generated as a result of the lease term requirements will be provided to the Regional Director or the District Mining Supervisor, as appropriate.

(5) The cost of any required salvage of such fossils shall be borne by the United States.

(6) These conditions apply to all such fossils of significant scientific interest discovered within the lease area whether discovered in the overburden, underburden, or coal seams or seams.

(c) Additional Special Stipulations
1. The lease area includes portion[s *sic*] of surface fee tracts 5202, 5202c, 5204, 5218-1; and flowage-easement tracts 468E-4, 4901E, 4902E, 4904E, 4906E, 4907E-1, 4907E-2,

4908E, 4909E-1 thru -4, 4910E-1, 4911E, 4920E, 4985E, 4994E, 5218E-2 and 5218E-5, which are subject to flooding, requiring that waste water and mineral effluent will not be allowed to flow or seep into the lake.

2. All structures and fuel storage facilities will be located off easement and fee lands.

3. The permitting of any mining operations on the lease will be subject to the possible designation of any portion of the lease as unsuitable, for some or all kinds of surface mining, under the regulations of the Department under the Mineral Leasing Act and the Surface Mining Control and Reclamation Act of 1977 in effect at the time of action on the mine plan permit.

4. Potential conflicts have been identified in conjunction with mining operations on the lease area with flood plain, outdoor recreation and endangered species habitat. Protective measures and/or specific mitigation will be developed at mine plan stage in consultation and coordination with appropriate Federal and State agencies and made a part of the approved mine plan.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial Number
BLM-C-018820OK
Date of Lease
May 1, 1962

COAL LEASE READJUSTMENT

This lease between the United States of America (the lessor) through the Bureau of Land Management (BLM) and Lone Star Steel Company, Lone Star, Texas 75668 (lessee) is readjusted, effective as of June 1, 1982 .

Sec. 1. STATUTES AND REGULATIONS - This lease readjustment is issued pursuant and subject to the terms and provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sections 181-263, hereafter referred to as the Act, and of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. Section 1201 et seq., the Federal Coal Leasing Amendments Act of 1976, as amended, 90 Stat. 1083-1092, and in the case of acquired lands, the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended, 30 U.S.C. 351-359 et seq. This lease is also subject to all regulations of the Secretary of the Interior (including but not limited to, 30 CFR Part 211 and Chapter VII and 43 CFR Group 3400), which are now in force or (except as expressly limited herein) hereafter in force, and all of such regulations are made a part hereof. No amendment to the regulations made subsequent to the effective date hereof shall alter the rental and production royalty requirements in sections 5 and 6 of this lease until the next readjustment of this lease.

Sec. 2. RIGHTS OF LESSEE. The lessor, in consideration of the rents and royalties and other conditions hereinafter set forth, hereby grants to the lessee the exclusive right and privilege to mine and dispose of all coal in the following-described tracts (lease lands) situated in the State of

Oklahoma:
Tract 1: T. 8 N., R. 23 E., IM, Oklahoma
Sec.13: $S^{1/2}$,$SE^{1/4}$ $NE^{1/4}$;
Sec.24: $N^{1/2}$
T. 8 N., R. 24 E., I.M., Okla.
Sec.18: Lots 1, 2, 3, and 4
Sec.19: Lots 1 and 2
Tract 1 - Containing 883.08 acres and beginning at a point 1320 ft. E. of the SE corner of Section 13, T. 8 N., R. 23 E., I.M.; Thence in a northernly direction 500 ft.; thence S 23° 48' E. 2430 ft.; thence S 66° 12' W, 1150 ft.; thence in a northernly direction 2140 ft. to the point containing 32.03 acres, more or less, in Sections 18 and 19 T. 8 W., R. 254 E., I.M., Oklahoma, for a total of 915.16 acres
Tract 2: T. 8 N., R. 24 E., IM, Oklahoma
Sec. 18: $NE^{1/4}NW^{1/4}$ and $NW^{1/4}SE^{1/4}NW^{1/4}$

Tract 2 - Contains 50 acres

containing 965.16 acres, more or less, with the right to construct all such work[s] [*sic*], buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Sec. 3. DILIGENCE. The lessee shall engage in the diligent development of the coal resources subject to the lease by timely preparation for and initiation of production of coal from this lease or from the Logical Mining Unit (LMU) of which this lease is a part so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in the regulations (43 CFR 3475.4). After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands. The terms diligent

development and continued operation are defined in the applicable regulations in Titles 10, 30 and 43 of the Code of Federal Regulations.

Sec. 4 BONDS. The lessee shall file with the appropriate Bureau of Land Management office a lease bond in the amount of $10,000, for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other items of this lease, the regulations and the Act (except for reclamation within this area covered by a surface mining permit issued under the permanent regulatory authority) and, if appropriate, for the protection of the surface owners on the leased lands. An increase in the amount of the lease bond may be required by the lessor at any time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL. An annual rental of $3.00 for each acre of fraction thereof shall be paid in advance on or before the anniversary date of this lease. Rentals under this lease shall be payable for each and every year during the continuance of the lease. Rentals paid for any lease year commencing prior to the effective date of this readjustment shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of this readjustment may not be credited against royalties (43 CFR 3473.3-1).

Sec. 6. PRODUCTION ROYALTY. The lessee shall pay a production royalty of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of coal produced by underground mining methods. The value of coal shall be determined as set forth in the 30 CFR 211. Production royalties paid for a calendar month shall be reduced by the amount of any advance royalties paid under this lease to the extent that such advance royalties have not been used to reduce production royalties in a previous month. Production royalties shall be payable the final day of the month succeeding the calendar month in which coal is sold, unless otherwise specified in 30 CFR 211.

Sec. 7. ADVANCE ROYALTY. Upon request by the lessee the Deputy Conservation Manager--Mining may accept, for a total of not more than ten years, the payment of advance royalties in lieu of the condition of continued operation for any particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and the Deputy Conservation Manager-Mining, which shall be made a part of the lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations. The advance royalty shall be based on a percent of value of a minimum number of tons which shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976.

Sec. 8. METHOD OF PAYMENTS. The lessee shall make rental payments to the appropriate BLM office until either production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the appropriate office of the U.S. Geological Survey. All remittances to BLM shall be made payable to the Bureau of Land Management; those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLORATION PLAN - The lessee shall not commence any exploration, except casual use, on the leased lands without an approved exploration plan. Exploration plans for leased lands covered by an approved mining permit shall be submitted to the Regional Director of the Office of Surface Mining in accordance with the regulations in 30 CFR Chapter VII. Exploration plans for leased lands not covered by an approved mining permit shall be submitted to the District Mining Supervisor in accordance with the regulations in 30 CFR 211.

Sec. 10. MINING PLAN. In accordance with the regulations in 30 CFR 211, and Chapter VII, if the lessee has not yet submitted a mining plan, he must do so within three years after the effective date of this readjustment. Mining operations shall

not commence until after the mining and reclamation plan is approved. The mining and reclamation shall be conducted in accordance with the approved mining and reclamation plan. Exploration activities which are not included in the approved mining and reclamation plan require submittal of exploration plans in accordance with Section 9 of this lease.

Sec. 11. LOGICAL MINING UNIT (LMU) - This lease is automatically considered to be an LMU. This LMU may be enlarged, adjusted or diminished in accordance with the applicable regulations in Titles 10, 30, and 43 of the Code of Federal Regulations. The mining plan for the LMU shall require that the reserves of the LMU will be mined within a period of 40 years in accordance with 30 CFR 211 and 43 CFR 3400.0-5. The definition of LMU and LMU reserves and other applicable conditions are set forth in the regulations in 43 CFR 3400.0-5 and 3475, 30 CFR 211, and Title 10 of the Code of Federal Regulations.

Sec. 12. OPERATIONS ON LEASED LANDS - (a) in accordance with conditions of this lease, the exploration and mining and reclamation plans, the permit issued pursuant to 30 CFR Chapter VII, and all applicable acts and regulations, the lessee shall exercise reasonable diligence, skill, and care in all operations on leased lands. (b) The lessee shall minimize to the maximum extent possible wasting of the coal deposits and other mineral and nonmineral resources, including but not limited to, surface resources which may be found in, upon, or under such lands.

Sec. 13. SPECIAL STATUTES - The lessee shall comply with the provisions of the Federal Water Pollution Control Act (33 U.S.C. 1151-1175) and the Clean Air Act (42 U.S.C. 7401 et seq.).

Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS - (a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, licenses, permits, easements, or rights-of-way, including leases for the

development of minerals other than coal under the Act. The lessor may authorize any other uses of the leased lands that do not unnecessarily interfere with the exploration and mining operations of the lessee, and the lessee shall make all reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right (i) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or (ii) to dispose of any resource in such lands if such deposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

Sec. 15. EQUAL OPPORTUNITY CLAUSE - The lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor.

Sec. 16. CERTIFICATION OF NONSEGREGATED FACILITIES - By entering into this lease, the lessee certifies that he does not and will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The lessee agrees that a breach of this certification is a violation of the Equal Opportunity clause of this lease. As used in this certification the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact

segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Lessee further agrees that (except where lessee has obtained identical certifications from proposed contractors and subcontractors for specific time periods) lessee will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts succeeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that lessee will retain such certifications in lessee's files; that lessee will forward the following notice to such proposed contractors and subcontractors (except where proposed contractor and subcontractor has submitted identical certifications for specific time period) Notice to prospective contractors and subcontractors of requirements for certification of nonsegregated facilities. A *Certification of Nonsegregated Facilities* as required by the May 9, 1967, order (32 F.R. 7439 May 19, 1967) on *Elimination of Segregated Facilities* by the Secretary of Labor, must be submitted prior to the award of a contract exceeding $10,000 which is not exempt from provisions of the Equal Opportunity clause. Certification may be submitted either for each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

Sec. 17. EMPLOYMENT PRACTICES - The lessee shall pay all wages due persons employed on the leased lands at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employees complete freedom to purchase goods and service of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day for underground workers, except in the case of emergency. The lessee shall employ no person under the age of 16 years in any mines below the surface. If the laws of the State in which the lands are situated conflict with this paragraph, then the State laws apply.

Sec. 18. MONOPOLY AND FAIR PRACTICES - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 187 and 189) necessary to insure that

any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such orders and regulations shall upon promulgation be binding upon the lessee.

Sec. 19. TRANSFERS -

- ■ This lease may be transferred in whole or in part to another person, association or corporation qualified under 43 CFR 3472.1-1 to hold a lease.
- ❑ This lease may only be transferred in whole or in part to another public body, or to a person who will mine the coal on behalf of and for the use of the public body, or to a person for the limited purpose of creating a security interest in favor of a lender who agrees to be obligated to mine the coal on behalf of the public body. The transferee must be qualified under 43 CFR 3472.
- ❑ This lease may only be transferred in whole or in part to other small businesses qualifying under 13 CFR 121 and 43 CFR 3472.2-2(c).

Any transfer of this lease in whole or in part is subject to the procedures and requirements for approval in the relevant regulations in 43 CFR 3400. A transfer will become effective on the first day of the month following its approval by the authorized officer, or, if the transferee requests, the first day of the month of approval.

Sec. 20. RELINQUISHMENT OF LEASE - The lessee may file a relinquishment of the entire lease, a legal subdivision or aliquot part thereof, but not less than 10 acres, or any bed of the coal deposits therein. The relinquishment shall be filed in triplicate with the authorized officer. Upon the determination by the authorized officer that the public interest shall not be impaired, that all accrued rentals and royalties have been paid and that all of the obligations of the lease under the regulations and the lease terms have been met, the relinquishment shall be accepted effective the date filed.

Sec. 21. NONCOMPLIANCE - Any failure to comply with

the conditions of this lease, the approved exploration and mining and reclamation plans, the regulations, or applicable acts shall be dealt with in accordance with the procedures set forth in the regulations.

Sec. 22. WAIVER OF CONDITIONS - The lessor reserves the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS - (a) The lease is subject to readjustment on May 1, 1992 and on each 10th year thereafter. In order that the lease may be readjusted as close as possible to the dates when it becomes subject to readjustment the lessor may propose the terms or readjustment of any conditions of this lease, including rental and royalty rates, before the 20th year after the effective date and before each 10-year interval thereafter. The authorized officer shall notify the lessee whether he intends to readjust the terms and conditions of the lease and, if he intends to readjust, the nature of the readjustments in accordance with the regulations in 43 CFR 3451. Unless the lessee, within 60 days after the receipt of the proposed readjusted conditions files with the lessor an objection to the proposed readjusted conditions or relinquishes the lease as of the effective date of the readjustment, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions, the existing conditions shall remain in effect until there has been an agreement between the lessor and lessee on the new conditions to be incorporated in the lease, or until the lessee has exhausted his rights of appeal under Section 29 of this lease, or until the lease is relinquished, except that the authorized officer may provide in the notice of readjusted lease

terms that the readjustment or any part thereof is effective pending the outcome of the appeal. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

Sec. 24. DELIVERY OF PREMISES - Upon termination of this lease for any reason, or relinquishment of a part of this lease, lessee shall deliver to the lessor in good order and condition all or the appropriate part of the leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations including 30 CFR 211 and Chapter VII, for the completion of operations and abandonment.

Sec. 25. PROPRIETARY INFORMATION - Geological and geophysical data and information, including maps, trade secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2, 30 CFR 211.6 and other applicable regulations. Total lease reserve figures developed from this information will not be confidential.

Sec. 26. LESSEE'S LIABILITY TO LESSOR - (a) The lessee shall be liable to the United States for any damages suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damages is caused by employees of the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the

jurisdiction where the damages occurred.

Sec. 27. INSPECTION AND INVESTIGATIONS - (a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept current and in such manner that the books and records can be readily checked at the mine, upon request, by the Regional Director or District Mining Supervisor or their representative.

(b) The lessee shall permit any duly authorized officer or representative of the lessor at any reasonable time (1) to inspect or investigate the leased lands, the exploration and mining and reclamation operations, and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) to copy, and make extracts from any such books and records.

Sec. 28. UNLAWFUL INTEREST - No member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(3), shall hold any share or part in this lease or derive any benefit therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. Sections 431-433, relating to contracts enter, into and form a part of this lease insofar as they may be applicable.
Sec. 29. APPEALS - The lessee shall have the right of appeal (a) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management, (b) under 30 CFR Part 290 from an action, order, or decision of any official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior or arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.

Sec. 30. SPECIAL STIPULATIONS -

(a) Cultural Resources (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall conduct a cultural resource intensive field inventory in a manner specified by the authorized office of the BLM or of the surface managing agency (if different) on portions of the mine plan area and adjacent areas, or exploration plan area, that may be adversely affected by lease-related activities and which were not previously inventories at such a level of intensity. The inventory shall be conducted by a qualified professional cultural resource specialist (i.e., archeologist, historian or historical architect, as appropriate, approved by the authorized officer of the surface managing agency (BLM if the surface is privately owned), and a report of the inventory and recommendations for protecting any cultural resources identified shall be submitted to the Regional Director of the Office of Surface Mining (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area) and the authorized officer of the BLM or the surface managing agency (if different). The lessee shall undertake measures, in accordance with instructions from the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining area), to protect cultural resources on the leased land. The lessee shall not commence the surface disturbing activities until permission to proceed is given by the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area).

(2) The lessee shall protect all cultural resource properties within the lease area from lease-related activities until the cultural resource mitigation measures can be implemented as part of an approved mining and reclamation plan or exploration plan.

(3) The cost of conducting the inventory, preparing reports, and carrying out mitigation measures shall be borne by the lessee.

(4) If cultural resources are discovered during operations

under this lease, the lessee shall immediately bring them to the attention of the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area), or the authorized officer of the surface mining permit agency if the Regional Director, or District Mining Supervisor, as appropriate, is not available. The lessee shall not disturb such resources except as may be subsequently authorized by the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area). Within two (2) working days of notification, the Regional Director (or the District Mining Supervisor if activities are associated with coal exploration outside an approved mining permit area) will evaluate or have evaluated any cultural resources discovered and will determine if any action may be required to protect or preserve such discoveries. The cost of data recovery for cultural resources discovered during lease operations shall be borne by the surface managing agency unless otherwise specified by the authorized office of the BLM or of the surface managing agency (if different).

(5) All cultural resources shall remain under the jurisdiction of the United States until ownership is determined under applicable law.

(b) Paleontological Resources. (1) Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall contact the Bureau of Land Management to determine whether the authorized officer will require the lessee to conduct a paleontological appraisal of the mine plan and adjacent areas, or exploration plan areas, that may be adversely affected by lease-related activities. If the authorized officer determines that one is necessary, the paleontological appraisal shall be conducted by a qualified paleontologist approved by the authorized officer of the surface managing agency (BLM if the surface is privately owned), using the published literature and, where appropriate, field appraisals for determining the possible existence of larger and more conspicuous fossils of scientific significance. A report of the appraisal and recommendations for protecting any larger and more

conspicuous fossils of significant scientific interest on the leased lands so identified shall be submitted to the authorized officer of the surface managing agency (BLM if the surface is privately owned). When necessary to protect and collect the larger and more conspicuous fossils of significant scientific interest on the leased lands, the lessee shall undertake the measures provided in the approval of the mining and reclamation plan or exploration plan.

(2) The lessee shall not knowingly disturb, alter, destroy or take any larger and more conspicuous fossils of significant scientific interest, and shall protect all such fossils in conformance with measures included in the approval of the mining sand reclamation plan or exploration plan.

(3) The lessee shall immediately bring any such fossils that might be altered or destroyed by his operation to the attention of the Regional Director or the District Mining Supervisor, as appropriate. Operations may continue as long as the fossil specimen or specimens would not be seriously damaged or destroyed by the activity. The Regional Director or the District Mining Supervisor, as appropriate, shall evaluate or have evaluated such discoveries brought to his attention and, within five (5) working days, shall notify the lessee what action shall be taken with respect to such discoveries.

(4) All such fossils of significant scientific interest shall remain under the jurisdiction of the United States until ownership is determined under applicable law. Copies of all paleontological resource data generated as a result of the lease term requirements will be provided to the Regional Director or the District Mining Supervisor, as appropriate.

(5) The cost of any required salvage of such fossils shall be borne by the United States.

(6) These conditions apply to all such fossils of significant scientific interest discovered within the lease area whether discovered in the overburden, underburden, or coal seams or seams.

SPECIAL STIPULATIONS -

1. The lessee will not conduct surface-disturbing activities on forested bottom areas unless no other feasible site is available.

2. Impacts of removal of wetland-riparian (forested bottomland) habitats or any diversion of tributaries of Wolf Creek must be mitigated. The mitigation shall be developed pursuant to the applicable regulatory program in effect when a mining and reclamation plan is submitted. When permanent diversions are constructed or the stream channel restored after temporary diversions, the operator shall as a minimum: restore, enhance or maintain where practicable the natural riparian vegetation on the banks of the stream and the natural stream channel and habitat characteristics. The Office of Surface Mining will prepare specific mitigation, at the mine plan stage, in consultation with appropriate state and federal fish and wildlife management agencies, taking into consideration the recommended mitigation received pursuant to the Fish and Wildlife Coordination Act.

3. Before undertaking any activities that may disturb the surface of the leased lands, the lessee shall contact the Bureau of Land Management to determine whether the authorized officer will require the lessee to conduct an intensive inventory of cultural resources on all proposed disturbance areas and adjacent affected areas.

APPENDIX G

Form 4-696
(December 1958)

Land Office
Santa Fe, New Mexico
Serial Number
NM 059992 (Oklahoma) 4.10g

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COAL LEASE
Act of February 25, 1920 (41 Stat. 437), as amended
and Act of June 28, 1944 (58 Stat. 483-485)

This lease entered into on June 1, 19 59, by the United States of America, lessor, through the Bureau of Land Management, and

Lone Star Steel Company, P.O. Box 12226, Dallas 25, Texas,

the lessee, pursuant and subject to the terms and provisions of the act of February 25, 1920 (41 Stat. 437), as amended, hereinafter referred to as the act, and to all reasonable regulations of the Secretary of the Interior now in force which are made a part hereof:

Witnesseth:

Section 1. *Rights of lessee*. The lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the coal in the following-described tracts of land, situated in the State of Oklahoma (Le Flore County):

T. 8 N., R. 23 E., Indian Meridian
Sec. 14: $SE^{1/4}SW^{1/4}$, $S^{1/2}SE^{1/4}$
23: All
24: $S^{1/2}$
25: $N^{1/2}N^{1/2}$, $SW^{1/4}NW^{1/4}$

26: N1/2, N1/2SW1/4

containing 1680.00 acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bond.* To maintain the bond furnished upon the issuance of this lease, which bond is conditioned upon compliance with all the provisions of the lease, and to increase the amount or furnish such other bond as may be required.

(b) *Rental.* To pay the lessor annually, in advance, for each acre or part thereof covered by this lease, beginning with the date hereof, the following rentals: 25 cents for the first year, 50 cents for the second, third, fourth, and fifth years, respectively, and $1 for the sixth and each succeeding year during the continuance of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

(c) *Royalty.* To pay the lessor a royalty of 15 cents on every ton of 2,000 pounds of coal mined during the first 20 years succeeding the execution of this lease. Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the coal is mined.

(d) *Minimum production.* Beginning with the sixth year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless on application and showing made, operations shall be suspended when market conditions are such that the lessee cannot operate except at a loss or suspended for the other reasons specified in section 39 of the act, to mine coal each year and pay a royalty thereon to a value of $1 per acre or fraction thereof. Operations under this lease shall be continuous except in the circumstances described or unless the

lessee shall pay a royalty, less rent, on such minimum amount of the leased deposits, for one year in advance, in which case operations may be suspended for that year.

(e) *Payments.* To make rental payments to the Manager of the appropriate Land Office, except that when this lease becomes productive the rentals and royalties shall be paid to the appropriate Regional Mining Supervisor of the United States Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Manager of the Land Office shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

(f) *Plats, reports, maps.* At such times and in such form as the lessor may prescribe, to furnish a plat showing development work and improvements on the leased lands and a report with respect to stockholders, investments, depreciation, and costs. To furnish in such form as the lessor may prescribe, within 30 days from the expiration of each quarter a report covering such quarter, certified by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the amount of leased deposits mined during the quarter, the character and quality thereof, amount of its products and byproducts disposed of and price received therefor, and amounts in storage or held for sale. To keep and prepare maps of the leased lands in accordance with the regulations in 30 CFR, part 211.

(g) *Weights.* To determine accurately the weight or quantity and quality of all leased deposits mined, and to enter accurately the weight or quantity and quality thereof in due form in books to be kept and preserved by the lessee for such purposes.

(h) *Inspection.* To permit at all reasonable times (1) inspection by any duly authorized officer of the Department, of the leased premises and all surface and underground improvements, works, machinery, equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and (2) the lessor to make copies of and extracts from any or all books and records pertaining to operations under this lease, if desired.

(i) *Assignment.* To file for approval in the appropriate Land Office within 90 days from the date of execution, any assignment or transfer made of this lease, whether by direct assignment, operating agreement, working or royalty interest, or otherwise. Such instrument will take effect the first day of the month following its approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of approval. The showing required to be made with an assignment or transfer is set forth in the regulations, 43 CFR 193.25.

(j) *Nondiscrimination.* In connection with the performance of work under this lease, the lessee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee also agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The lessee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(k) *Land disposed of with coal deposits reserved to the United States.* If the lands embraced herein have been or shall hereafter be disposed of under laws reserving to the United States the deposits of coal therein, to comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

(l) *Operations, wages, freedom of purchase.* To comply with the operating regulations (30 CFR, part 211), to exercise reasonable diligence, skill, and care in the operations of the property, and to carry on all operations in accordance with approve methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health or property, and of waste or damage to any water or mineral deposits; to fairly and justly weight or measure the coal mined by each miner, to pay all wages due miners and

employees, both above and below ground, at least twice each month in lawful money of the United States; to accord all miners and employees complete freedom of purchase, to restrict the workday to not exceeding eight hours in any one day for underground workers, except in cases of emergency; to employ no boy under the age of sixteen and no girl or woman, without regard to age, in ahy [*sic*] mine below the surface; unless the laws of the State otherwise provide, in which case the State laws control.

(m) *Taxes.* To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, output of mines, or other rights, property, or assets of the lessee.

(n) *Overriding royalties.* Not to create, by assignment or otherwise, an overriding royalty interest in excess of 50 percent of the rate of royalty first payable to the United States under this lease or an overriding royalty interest which when added to any other outstanding overriding royalty interest exceeds that percentage, excepting, that where an interest in the leasehold or in an operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

(o) *Delivery of premises in case of forfeiture.* In case of forfeiture of this lease, to deliver up to the lessor in good order and condition the land leased, including all buildings, and underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit.

Sec. 3. The lessor expressly reserves:

(a) *Rights reserved.* The right to permit for joint or several use such easements or rights-of-way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in the act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.* The right to lease, sell, or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or to dispose of any resource in such lands which will not unreasonably interfere with operations under this lease.

(c) *Monopoly and fair prices.* Full power and authority to promulgate and enforce all the provisions of section 30 of the act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

(d) *Readjustment of terms.* The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20-year period, he will be deemed to have agreed to such terms.

(e) *Waiver of conditions.* The right to waive any breach of the conditions contained herein, except the breach of such conditions as are required by the act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach;\nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 4. *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate Land Office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals, and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased

lands in accordance with the regulations and terms of the lease.

Sec. 5. *Protection of the surface, natural resources, and improvements.* The lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) Causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by the United States or by its grazing permittees or lessees; and upon any partial or total relinquishment or the cancellation or expiration of this lease, or at any other time prior thereto when required by the lessor and to the extent deemed necessary by the lessor, to fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, restore the surface of the leased land to its former condition, including the removal of structures as and if required. The lessor may prescribe the steps to be taken and restoration to be made with respect to lands of the United States and improvements thereon.

Sec. 6. *Removal of equipment, etc., on termination of lease.* Upon the termination of this lease, by surrender or forfeiture, the lessee shall have the privilege at any time within a period of 90 days thereafter of removing from the premises all machinery, equipment, tools and materials, other than underground timbering placed by the lessee in or on the leased lands, which are necessary for the preservation of the mine. Any materials, tools, appliances, machinery, structures, and equipment, subject to removal as above provided, which are allowed to remain on the leased lands shall become the property of the lessor on expiration of the 90-day period or such extension thereof as may be granted because of adverse climatic conditions, but the lessee shall remove any or all of such property where so directed by the lessor.

Sec. 7. *Proceedings in case of default.* If the lessee shall not comply with any of the provisions of the act or the regulations thereunder or default in the performance or

observance of any of the provisions of this lease, and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act (30 USC, sec. 188). If the lessee fails to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the lessee. However, the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

Sec. 8. *Heirs and successors in interest.* Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall insure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. *Unlawful interest.* No Member of, or Delegate to, Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(1), shall be admitted to any share or part of this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, as amended (41 USC, sec. 22), and sections 431, 432, and 433, title 18, U. S. Code, relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

THE UNITED STATES OF AMERICA

By /s/ Douglas E. Henriques
Douglas E. Henriques
(Signing Officer)

Manager May 25, 1959
(Title) (Date)

Witnesses to the Signature of Lessee

_____	Lone Star Steel Company (Signature of Lessee)
/s/ John M. Morris	By: /s/ W. H. Johnson (Signature of Lessee) W. H. Johnson Executive Vice President
/s/ R. T. Lafferty	_____ (Signature of Lessee)

(If this lease is executed by a corporation, it must bear the corporate seal)

Form 4-696
(December 1958)

Land Office
Santa Fe, New Mexico
Serial Number
NM 050405 (Oklahoma) 4.10f

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COAL LEASE
Act of February 25, 1920 (41 Stat. 437), as amended

This lease entered into on December 1, 1959, by the United States of America, lessor, through the Bureau of Land Management, and

Lone Star Steel Company, P.O. Box 12226, Dallas 25, Texas,

the lessee, pursuant and subject to the terms and provisions of the act of February 25, 1920 (41 Stat. 437), as amended, hereinafter referred to as the act, and to all reasonable regulations of the Secretary of the Interior now in force which are made a part hereof.

Witnesseth:

Section 1. *Rights of lessee.* The lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the coal in the following-described tracts of land, situated in the State of Oklahoma:

T. 8 N., R. 24 E., Indian Mer., Le Flore County, Oklahoma (Choctaw-Chickasaw)

Sec. 22: $SE^{1/4}$
23: $S^{1/2}$
24: $S^{1/4}SE^{1/4}$
25: $NE^{1/4}NE^{1/4}$
26: $N^{1/2}$, $NE^{1/4}$

T. 8 N., R. 24 E., Indian Mer.,

Sec. 19: Lots 3,4, $E^{1/2}SW^{1/4}$, $SE^{1/4}$
Sec. 30: Lot 1, $NE^{1/4}$, $NW^{1/4}$, $N^{1/2}NE^{1/4}$
containing 1116.17 acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bond.* To maintain the bond furnished upon the issuance of this lease, which bond is conditioned upon compliance with all the provisions of the lease, and to increase the amount or furnish such other bond as may be required.

(b) *Rental.* To pay the lessor annually, in advance, for each acre or part thereof covered by this lease, beginning with the date hereof, the following rentals: 25 cents for the first year, 50 cents for the second, third, fourth, and fifth years, respectively, and $1 for the sixth and each succeeding year during the continuance of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

(c) *Royalty.* To pay the lessor a royalty of 15 cents on every ton of 2,000 pounds of coal mined during the first 20 years succeeding the execution of this lease. Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the coal is mined.

(d) *Minimum production.* Beginning with the sixth year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless on application and showing made, operations shall be suspended when market conditions are such that the lessee cannot operate except at a loss or suspended for the other reasons specified in section 39 of the act, to mine coal each year and pay a royalty thereon to a value of $1 per acre or fraction thereof. Operations under this lease shall be continuous except in the circumstances described or unless the

lessee shall pay a royalty, less rent, on such minimum amount of the leased deposits, for one year in advance, in which case operations may be suspended for that year.

(e) *Payments.* To make rental payments to the Manager of the appropriate Land Office, except that when this lease becomes productive the rentals and royalties shall be paid to the appropriate Regional Mining Supervisor of the United States Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Manager of the Land Office shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

(f) *Plats, reports, maps.* At such times and in such form as the lessor may prescribe, to furnish a plat showing development work and improvements on the leased lands and a report with respect to stockholders, investments, depreciation, and costs. To furnish in such form as the lessor may prescribe, within 30 days from the expiration of each quarter a report covering such quarter, certified by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the amount of leased deposits mined during the quarter, the character and quality thereof, amount of its products and byproducts disposed of and price received therefor, and amounts in storage or held for sale. To keep and prepare maps of the leased lands in accordance with the regulations in 30 CFR, part 211.

(g) *Weights.* To determine accurately the weight or quantity and quality of all leased deposits mined, and to enter accurately the weight or quantity and quality thereof in due form in books to be kept and preserved by the lessee for such purposes.

(h) *Inspection.* To permit at all reasonable times (1) inspection by any duly authorized officer of the Department, of the leased premises and all surface and underground improvements, works, machinery, equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and (2) the lessor to make copies of and extracts from any or all books and records pertaining to operations under this lease, if desired.

(i) *Assignment.* To file for approval in the appropriate Land Office within 90 days from the date of execution, any assignment or transfer made of this lease, whether by direct assignment, operating agreement, working or royalty interest, or otherwise. Such instrument will take effect the first day of the month following its approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of approval. The showing required to be made with an assignment or transfer is set forth in the regulations, 43 CFR 193.25.

(j) *Nondiscrimination.* In connection with the performance of work under this lease, the lessee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee also agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The lessee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(k) *Land disposed of with coal deposits reserved to the United States.* If the lands embraced herein have been or shall hereafter be disposed of under laws reserving to the United States the deposits of coal therein, to comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

(l) *Operations, wages, freedom of purchase.* To comply with the operating regulations (30 CFR, part 211), to exercise reasonable diligence, skill, and care in the operations of the property, and to carry on all operations in accordance with approve methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health or property, and of waste or damage to any water or mineral deposits; to fairly and justly weight or measure the coal mined by each miner, to pay all wages due miners and

employees, both above and below ground, at least twice each month in lawful money of the United States; to accord all miners and employees complete freedom of purchase, to restrict the workday to not exceeding eight hours in any one day for underground workers, except in cases of emergency; to employ no boy under the age of sixteen and no girl or woman, without regard to age, in ahy [*sic*] mine below the surface; unless the laws of the State otherwise provide, in which case the State laws control.

(m) *Taxes.* To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, output of mines, or other rights, property, or assets of the lessee.

(n) *Overriding royalties.* Not to create, by assignment or otherwise, an overriding royalty interest in excess of 50 percent of the rate of royalty first payable to the United States under this lease or an overriding royalty interest which when added to any other outstanding overriding royalty interest exceeds that percentage, excepting, that where an interest in the leasehold or in an operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

(o) *Delivery of premises in case of forfeiture.* In case of forfeiture of this lease, to deliver up to the lessor in good order and condition the land leased, including all buildings, and underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit.

Sec. 3. The lessor expressly reserves:

(a) *Rights reserved.* The right to permit for joint or several use such easements or rights-of-way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in the act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.* The right to lease, sell, or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or to dispose of any resource in such lands which will not unreasonably interfere with operations under this lease.

(c) *Monopoly and fair prices.* Full power and authority to promulgate and enforce all the provisions of section 30 of the act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

(d) *Readjustment of terms.* The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20-year period, he will be deemed to have agreed to such terms.

(e) *Waiver of conditions.* The right to waive any breach of the conditions contained herein, except the breach of such conditions as are required by the act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach;\nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 4. *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate Land Office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals, and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased

lands in accordance with the regulations and terms of the lease.

Sec. 5. *Protection of the surface, natural resources, and improvements.* The lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) Causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by the United States or by its grazing permittees or lessees; and upon any partial or total relinquishment or the cancellation or expiration of this lease, or at any other time prior thereto when required by the lessor and to the extent deemed necessary by the lessor, to fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, restore the surface of the leased land to its former condition, including the removal of structures as and if required. The lessor may prescribe the steps to be taken and restoration to be made with respect to lands of the United States and improvements thereon.

Sec. 6. *Removal of equipment, etc., on termination of lease.* Upon the termination of this lease, by surrender or forfeiture, the lessee shall have the privilege at any time within a period of 90 days thereafter of removing from the premises all machinery, equipment, tools and materials, other than underground timbering placed by the lessee in or on the leased lands, which are necessary for the preservation of the mine. Any materials, tools, appliances, machinery, structures, and equipment, subject to removal as above provided, which are allowed to remain on the leased lands shall become the property of the lessor on expiration of the 90-day period or such extension thereof as may be granted because of adverse climatic conditions, but the lessee shall remove any or all of such property where so directed by the lessor.

Sec. 7. *Proceedings in case of default.* If the lessee shall not comply with any of the provisions of the act or the regulations thereunder or default in the performance or

observance of any of the provisions of this lease, and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act (30 USC, sec. 188). If the lessee fails to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the lessee. However, the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

Sec. 8. *Heirs and successors in interest.* Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall insure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. *Unlawful interest.* No Member of, or Delegate to, Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(1), shall be admitted to any share or part of this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, as amended (41 USC, sec. 22), and sections 431, 432, and 433, title 18, U. S. Code, relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

THE UNITED STATES OF AMERICA

By /s/ Howard M. Grotberg
Howard M. Grotberg
(Signing Officer)

Chief, Minerals Adjudication Section December 28, 1959
(Title) (Date)

Witnesses to the Signature of Lessee

/s/ John M. Morris John M. Morris, Secretary	Lone Star Steel Company (Signature of Lessee)
/s/ R. T. Lafferty	By: /s/ W. H. Johnson (Signature of Lessee) W. H. Johnson Executive Vice President
_____	_____ (Signature of Lessee)

(If this lease is executed by a corporation, it must bear the corporate seal)

Form 4-696
(December 1958)

Land Office
Santa Fe, New Mexico
Serial Number
NM 050406 (Oklahoma) 4.20f

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

COAL LEASE
Act of February 25, 1920 (41 Stat. 437), as amended

This lease entered into on December 1, 19 59, by the United States of America, lessor, through the Bureau of Land Management, and

Lone Star Steel Company, P.O. Box 12226, Dallas 25, Texas,

the lessee, pursuant and subject to the terms and provisions of the act of February 25, 1920 (41 Stat. 437), as amended, hereinafter referred to as the act, and to all reasonable regulations of the Secretary of the Interior now in force which are made a part hereof.

Witnesseth:

Section 1. *Rights of lessee.* The lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the coal in the following-described tracts of land, situated in the State of Oklahoma:

T. 5 N., R. 15 E., Ind. Mer., Pittsburg County, Oklahoma (Choctaw-Chickasaw)

Sec. 21: $SW^{1/4}SW^{1/4}$
26: $SW^{1/4}NE^{1/4}$, $W^{1/2}SE^{1/4}$, $SW^{1/4}$, $S^{1/2}NW^{1/4}$, $NW^{1/4}NW^{1/4}$
27: All
28: All
29: $NE^{1/4}$ $NE^{1/4}$, $S^{1/2}NE^{1/4}$, $S^{1/2}$

Sec. 30: Lot 4, $SE^{1/4}$ $NE^{1/4}$, $E^{1/2}SE^{1/4}$, $SW^{1/4}SE^{1/4}$, $SE^{1/4}SW^{1/4}$

containing 2400.31 acres, more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bond.* To maintain the bond furnished upon the issuance of this lease, which bond is conditioned upon compliance with all the provisions of the lease, and to increase the amount or furnish such other bond as may be required.

[(b) *Rental.* To pay the lessor annually, in advance, for each acre or part thereof covered by this lease, beginning with the date hereof, the following rentals: 25 cents for the first year, 50 cents for the second, third, fourth, and fifth years, respectively, and $1 for the sixth and each succeeding year during the continuance of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.]*

(c) *Royalty.* To pay the lessor a royalty of 15 cents on every ton of 2,000 pounds of coal mined during the first 20 years succeeding the execution of this lease. Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the coal is mined.

(d) *Minimum production.* Beginning with the sixth year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless on application and showing made, operations shall be suspended when market conditions are such that the lessee cannot operate except at a loss or suspended for the other reasons specified in section 39 of the act, to mine coal each

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[***Petitioner's Note:*** This subsection (b) struck through on original document and amended subsection (b) added below].

year and pay a royalty thereon to a value of $1 per acre or fraction thereof. Operations under this lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on such minimum amount of the leased deposits, for one year in advance, in which case operations may be suspended for that year.

(e) *Payments*. To make rental payments to the Manager of the appropriate Land Office, except that when this lease becomes productive the rentals and royalties shall be paid to the appropriate Regional Mining Supervisor of the United States Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Manager of the Land Office shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

(f) *Plats, reports, maps*. At such times and in such form as the lessor may prescribe, to furnish a plat showing development work and improvements on the leased lands and a report with respect to stockholders, investments, depreciation, and costs. To furnish in such form as the lessor may prescribe, within 30 days from the expiration of each quarter a report covering such quarter, certified by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the amount of leased deposits mined during the quarter, the character and quality thereof, amount of its products and byproducts disposed of and price received therefor, and amounts in storage or held for sale. To keep and prepare maps of the leased lands in accordance with the regulations in 30 CFR, part 211.

(g) *Weights*. To determine accurately the weight or quantity and quality of all leased deposits mined, and to enter accurately the weight or quantity and quality thereof in due form in books to be kept and preserved by the lessee for such purposes.

(h) *Inspection*. To permit at all reasonable times (1) inspection by any duly authorized officer of the Department, of the leased premises and all surface and underground improvements, works, machinery, equipment, and all books and records pertaining to operations and surveys or

investigations under this lease; and (2) the lessor to make copies of and extracts from any or all books and records pertaining to operations under this lease, if desired.

(i) *Assignment.* To file for approval in the appropriate Land Office within 90 days from the date of execution, any assignment or transfer made of this lease, whether by direct assignment, operating agreement, working or royalty interest, or otherwise. Such instrument will take effect the first day of the month following its approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of approval. The showing required to be made with an assignment or transfer is set forth in the regulations, 43 CFR 193.25.

(j) *Nondiscrimination.* In connection with the performance of work under this lease, the lessee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee also agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The lessee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(k) *Land disposed of with coal deposits reserved to the United States.* If the lands embraced herein have been or shall hereafter be disposed of under laws reserving to the United States the deposits of coal therein, to comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

(l) *Operations, wages, freedom of purchase.* To comply with the operating regulations (30 CFR, part 211), to exercise reasonable diligence, skill, and care in the operations of the property, and to carry on all operations in accordance with approve methods and practices as provided in the operating regulations, having due regard for the prevention of injury to

life, health or property, and of waste or damage to any water or mineral deposits; to fairly and justly weight or measure the coal mined by each miner, to pay all wages due miners and employees, both above and below ground, at least twice each month in lawful money of the United States; to accord all miners and employees complete freedom of purchase, to restrict the workday to not exceeding eight hours in any one day for underground workers, except in cases of emergency; to employ no boy under the age of sixteen and no girl or woman, without regard to age, in ahy [*sic*] mine below the surface; unless the laws of the State otherwise provide, in which case the State laws control.

(m) *Taxes.* To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, output of mines, or other rights, property, or assets of the lessee.

(n) *Overriding royalties.* Not to create, by assignment or otherwise, an overriding royalty interest in excess of 50 percent of the rate of royalty first payable to the United States under this lease or an overriding royalty interest which when added to any other outstanding overriding royalty interest exceeds that percentage, excepting, that where an interest in the leasehold or in an operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

(o) *Delivery of premises in case of forfeiture.* In case of forfeiture of this lease, to deliver up to the lessor in good order and condition the land leased, including all buildings, and underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit.

Sec. 3. The lessor expressly reserves:

(a) *Rights reserved.* The right to permit for joint or several use such easements or rights-of-way, including easements in tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in the act, and

the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.* The right to lease, sell, or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or to dispose of any resource in such lands which will not unreasonably interfere with operations under this lease.

(c) *Monopoly and fair prices.* Full power and authority to promulgate and enforce all the provisions of section 30 of the act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

(d) *Readjustment of terms.* The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20-year period, he will be deemed to have agreed to such terms.

(e) *Waiver of conditions.* The right to waive any breach of the conditions contained herein, except the breach of such conditions as are required by the act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach;\nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 4. *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the appropriate Land Office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee

and his surety to make payment of all accrued rentals, and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

Sec. 5. *Protection of the surface, natural resources, and improvements.* The lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) Causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by the United States or by its grazing permittees or lessees; and upon any partial or total relinquishment or the cancellation or expiration of this lease, or at any other time prior thereto when required by the lessor and to the extent deemed necessary by the lessor, to fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, restore the surface of the leased land to its former condition, including the removal of structures as and if required. The lessor may prescribe the steps to be taken and restoration to be made with respect to lands of the United States and improvements thereon.

Sec. 6. *Removal of equipment, etc., on termination of lease.* Upon the termination of this lease, by surrender or forfeiture, the lessee shall have the privilege at any time within a period of 90 days thereafter of removing from the premises all machinery, equipment, tools and materials, other than underground timbering placed by the lessee in or on the leased lands, which are necessary for the preservation of the mine. Any materials, tools, appliances, machinery, structures, and equipment, subject to removal as above provided, which are allowed to remain on the leased lands shall become the property of the lessor on expiration of the 90-day period or such extension thereof as may be granted because of adverse climatic conditions, but the lessee shall remove any or all of such property where so directed by the lessor.

Sec. 7. *Proceedings in case of default.* If the lessee shall not comply with any of the provisions of the act or the regulations thereunder or default in the performance or observance of any of the provisions of this lease, and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act (30 USC, sec. 188). If the lessee fails to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the lessee. However, the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

Sec. 8. *Heirs and successors in interest.* Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall insure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. *Unlawful interest.* No Member of, or Delegate to, Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(1), shall be admitted to any share or part of this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, as amended (41 USC, sec. 22), and sections 431, 432, and 433, title 18, U. S. Code, relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

THE UNITED STATES OF AMERICA

By /s/ Howard M. Grotberg
Howard M. Grotberg
(Signing Officer)

Chief, Minerals Adjudication Section December 28, 1959
(Title) (Date)

Witnesses to the Signature of Lessee

/s/ John M. Morris
John M. Morris, Secretary

/s/ R. T. Lafferty

Lone Star Steel Company
(Signature of Lessee)

By: /s/ W. H. Johnson
(Signature of Lessee)
W. H. Johnson
Executive Vice President

(Signature of Lessee)

(If this lease is executed by a corporation, it must bear the corporate seal)

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT this day made and entered into by and between S.E. EVANS, INC., a corporation, hereinafter called EVANS, and LONE STAR STEEL COMPANY, a corporation organized and existing under the laws of the State of Texas, hereinafter called LONE STAR.

WITNESSETH:

WHEREAS, EVANS is the owner of a certain coal lease, to wit NM 059996 (Oklahoma), issued April 1, 1960, by the United States Department of the Interior, Bureau of Land Management to George M. Brown, said coal lease assigned by George M. Brown to S.E. EVANS, INC>, on August 25, 1960, and said assignment approved by the Bureau of Land Management on March 22, 1961, and

WHEREAS, LONE STAR is desirous of securing an assignment of said lease from EVANS, subject to the approval of the Bureau of Land Management, to LONE STAR, and

WHEREAS, EVANS is agreeable to assigning its right, title, and interest in said lease, subject to Bureau of Land Management approval, to LONE STAR,

THEREFORE, BE IT RESOLVED AS FOLLOWS:

EVANS, for and inconsideration of the sum of TEN DOLLARS ($10.00) and other good and valuable consideration, receipt of which is hereby acknowledged and confessed by EVANS, has sold, assigned, transferred, and delivered, and by these presents does sell, assign, transfer and deliver unto LONE STAR, its successors and assigns forever, all of its right, title, and interest in and to a certain lease in writing dated April 1, 1960, from the United States of America to George M. Brown, Number NM 059996 (Oklahoma), said lease [2] assigned by George M. Brown to S. E. EVANS, Inc., August 25, 1960, and said assignment approved by the

Bureau of Land Management on March 22, 1961, leasing certain coal bearing lands situated in the State of Oklahoma, more particularly described as follows:

T 5 N, R 16 E, Ind. Mer.
Section 1: $S^{1/2}S^{1/2}$
T 5 N, R 17 E, Ind. Mer.
Section 2: $NW^{1/4}$ $SW^{1/4}$
Section 3: $N^{1/2}$ $S^{1/2}$
Section 4: $S^{1/2}NW^{1/4}SW^{1/4}$;$N^{1/2}SW^{1/4}SW^{1/4}$
Section 5: Lots 1, 2 of Townsite Addition 17:
$SE^{1/4}SW^{1/4}$; $SW^{1/4}SE^{1/4}$; $S^{1/2}NE^{1/4}$
$SE^{1/4}$; $N^{1/2}SE^{1/4}SE^{1/4}$;
Section 6: Lot 7; $SE^{1/4}SW^{1/4}$; Lots 3, 4, 5, 6, 7, 8, 9 of Townsite Addition 17,
all in Pittsburg and Latimer Counties, Oklahoma, containing 718.88 acres, more or less,

together with all rights and privileges stated in such lease, to have and to hold unto the said LONE STAR, its successors and assigns forever.

It is understood and agreed that this ASSIGNMENT AGREEMENT is subject to the approval of the Bureau of Land Management. Upon approval of transfer or at such time as shall be required, LONE STAR shall deposit its bond with the Bureau of Land Management in lieu of the bond now on deposit by EVANS and shall thereafter relieve EVANS from any payment of such future expense in connection with the lease.

So long as LONE STAR shall continue said lease in effect, LONE STAR shall make all payments accruing after assignment approval that are required to be made as rental or royalty under said lease, and to do and perform all acts and obligations as required under said lease.

LONE STAR shall pay George M. Brown an overriding royalty of seven and one-half cents ($7\text{-}^{1/2}¢$) per ton on all coal produced and mined from the leased premises, said payments, payable by LONE STAR,[3] to be made by the 15th day of the month following that month for which royalty is due, it being

understood however that all mining and producing coal and related activities under this lease shall be at the sole and exclusive discretion of LONE STAR only. LONE STAR shall not be required to drill, mine, produce, or remove coal from the leased premises until such time, if any, in its sole discretion and option it shall be economically feasible and desirable to do so.

LONE STAR shall have the full and free right to sell and assign said lease without hindrance, subject to Bureau of Land Management approval; and subject to the overriding royalty provided hereinabove.

EVANS warrants that it is the owner of the above described lease by assignment, that the lease is now in full force and effect, that EVANS is not in default of any term or payment under said lease or its assignment agreement with George M. Brown, and that it has the full and free right to sell, assign, transfer, and deliver said lease as herein done, subject only to the approval of the United States Department of the Interior, Bureau of Land Management. EVANS agrees to cooperate with LONE STAR in securing such approval.

IN WITNESS HEREOF, the parties hereto have hereunder set their hands this the 24th day of September, 1974.

Attest:

/s/ Ray Kearns
Secretary

S. E. EVANS, INC.

By /s/ S. E. Evans
President

Attest:

/s/ [illegible]
Secretary

By /s/ M. R. Dodson
President

STATE OF TEXAS, County of DALLAS, ss:

On this 26th day of September, A.D. 19 74, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared M. R. Dodson, to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last written above.

My commission expires June 1, 1975.

Sue B. Johnson
Notary Public

[SEAL]

STATE OF ARKANSAS, County of Ft. Smith, ss:

On this 24th day of September, A.D. 19 74, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared S.E. Evans, to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last written above.

My commission expires November 18, 1975

Doris Reed
Notary Public

[SEAL]

Form 4-696
(December 1958)

Land Office
New Mexico
Serial Number
BLM-C-018820 (Oklahoma)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Land Office
P.O. Box 1251
Santa Fe, New Mexico

COAL LEASE

Act of February 25, 1920 (41 Stat. 437), as amended
and the Act of June 28, 1944 (58 Stat. 483-485)

This lease entered into on June 1 - 1962, by the United States of America, lessor, through the Bureau of Land Management, and Lone Star Steel Company, P.O. Box 12226, Dallas 25, Texas,

the lessee, pursuant and subject to the terms and provisions of the act of February 25, 1920 (41 Stat. 437), as amended, hereinafter referred to as the act, and to all reasonable regulations of the Secretary of the Interior now in force which are made a part hereof.

Witnesseth:

Section 1. *Rights of lessee*. The lessor, in consideration of the rents and royalties to be paid and the conditions to be observed as hereinafter set forth does hereby grant and lease to the lessee the exclusive right and privilege to mine and dispose of all the coal in the following-described tracts of land, situated in the State of Oklahoma: T. 8 N., R. 23 E., Indian Meridian, Okla. Sec. 13: $S^{1/2}$,$SE^{1/4}$ $NE^{1/4}$
24: $N^{1/2}$
T. 8 N., R. 24 E., I.M., Okla.
Sec. 18: Lots 1, 2, 3, and 4

19: Lots 1 and 2
Containing 883.08 acres and beginning at a point 1320 ft. E. of the SE corner of Section 13, T. 8 N., R. 23 E., I.M.; Thence in a northernly direction 500 ft.; thence S 23° 48' E. 2430 ft.; thence s 66° 12' W, 1150 ft.; thence in a northernly direction 2140 ft. to the point containing 32.03 acres, more or less, in Sections 18 and 19 T. 8 W., R. 254 E., I.M., Oklahoma, for a total of 915.16 acres [containing 915.16 acres], more or less, together with the right to construct all such works, buildings, plants, structures, and appliances as may be necessary and convenient for the mining and preparation of the coal for market, the manufacture of coke or other products of coal, the housing and welfare of employees, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted.

Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bond*. To maintain the bond furnished upon the issuance of this lease, which bond is conditioned upon compliance with all the provisions of the lease, and to increase the amount or furnish such other bond as may be required.

(b) *Rental*. To pay the lessor annually, in advance, for each acre or part thereof covered by this lease, beginning with the date hereof, the following rentals: 25 cents for the first year, 50 cents for the second, third, fourth, and fifth years, respectively, and $1 for the sixth and each succeeding year during the continuance of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

(c) *Royalty*. To pay the lessor a royalty of 15 cents on every ton of 2,000 pounds of coal mined during the first 20 years succeeding the execution of this lease. Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the coal is mined.

(d) *Minimum production*. Beginning with the sixth year of the lease, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee, or unless on application and showing made, operations shall be

suspended when market conditions are such that the lessee cannot operate except at a loss or suspended for the other reasons specified in section 39 of the act, to mine coal each year and pay a royalty thereon to a value of $1 per acre or fraction thereof. Operations under this lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on such minimum amount of the leased deposits, for one year in advance, in which case operations may be suspended for that year.

(e) *Payments*. To make rental payments to the Manager of the appropriate Land Office, except that when this lease becomes productive the rentals and royalties shall be paid to the appropriate Regional Mining Supervisor of the United States Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Manager of the Land Office shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

(f) *Plats, reports, maps*. At such times and in such form as the lessor may prescribe, to furnish a plat showing development work and improvements on the leased lands and a report with respect to stockholders, investments, depreciation, and costs. To furnish in such form as the lessor may prescribe, within 30 days from the expiration of each quarter a report covering such quarter, certified by the superintendent of the mine, or by such other agent having personal knowledge of the facts as may be designated by the lessee for such purpose, showing the amount of leased deposits mined during the quarter, the character and quality thereof, amount of its products and byproducts disposed of and price received therefor, and amounts in storage or held for sale. To keep and prepare maps of the leased lands in accordance with the regulations in 30 CFR, part 211.

(g) *Weights*. To determine accurately the weight or quantity and quality of all leased deposits mined, and to enter accurately the weight or quantity and quality thereof in due form in books to be kept and preserved by the lessee for such purposes.

(h) *Inspection*. To permit at all reasonable times (1) inspection by any duly authorized officer of the Department, of

the leased premises and all surface and underground improvements, works, machinery, equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and (2) the lessor to make copies of and extracts from any or all books and records pertaining to operations under this lease, if desired.

(i) *Assignment.* To file for approval in the appropriate Land Office within 90 days from the date of execution, any assignment or transfer made of this lease, whether by direct assignment, operating agreement, working or royalty interest, or otherwise. Such instrument will take effect the first day of the month following its approval by the Bureau of Land Management, or if the assignee requests, the first day of the month of approval. The showing required to be made with an assignment or transfer is set forth in the regulations, 43 CFR 193.25.

(j) *Nondiscrimination.* In connection with the performance of work under this lease, the lessee agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee also agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause. The lessee further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

(k) *Land disposed of with coal deposits reserved to the United States.* If the lands embraced herein have been or shall hereafter be disposed of under laws reserving to the United States the deposits of coal therein, to comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

(l) *Operations, wages, freedom of purchase.* To comply with the operating regulations (30 CFR, part 211), to exercise reasonable diligence, skill, and care in the operations of the

property, and to carry on all operations in accordance with approve methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health or property, and of waste or damage to any water or mineral deposits; to fairly and justly weight or measure the coal mined by each miner, to pay all wages due miners and employees, both above and below ground, at least twice each month in lawful money of the United States; to accord all miners and employees complete freedom of purchase, to restrict the workday to not exceeding eight hours in any one day for underground workers, except in cases of emergency; to employ no boy under the age of sixteen and no girl or woman, without regard to age, in ahy [*sic*] mine below the surface; unless the laws of the State otherwise provide, in which case the State laws control.

(m) *Taxes.* To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, output of mines, or other rights, property, or assets of the lessee.

(n) *Overriding royalties.* Not to create, by assignment or otherwise, an overriding royalty interest in excess of 50 percent of the rate of royalty first payable to the United States under this lease or an overriding royalty interest which when added to any other outstanding overriding royalty interest exceeds that percentage, excepting, that where an interest in the leasehold or in an operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

(o) *Delivery of premises in case of forfeiture.* In case of forfeiture of this lease, to deliver up to the lessor in good order and condition the land leased, including all buildings, and underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit.

Sec. 3. The lessor expressly reserves:

(a) *Rights reserved.* The right to permit for joint or several use such easements or rights-of-way, including easements in

tunnels upon, through, or in the land leased, occupied, or used as may be necessary or appropriate to the working of the same or other lands containing the deposits described in the act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.* The right to lease, sell, or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein, or to dispose of any resource in such lands which will not unreasonably interfere with operations under this lease.

(c) *Monopoly and fair prices.* Full power and authority to promulgate and enforce all the provisions of section 30 of the act to insure the sale of the production of said leased lands to the United States and to the public at reasonable prices, to prevent monopoly, and to safeguard the public welfare.

(d) *Readjustment of terms.* The right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period. Unless the lessee files objections to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice of proposed terms for a 20-year period, he will be deemed to have agreed to such terms.

(e) *Waiver of conditions.* The right to waive any breach of the conditions contained herein, except the breach of such conditions as are required by the act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach; nor shall the waiver of a particular cause of forfeiture prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

Sec. 4. *Relinquishment of lease.* Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof.

A relinquishment must be filed in duplicate in the appropriate Land Office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals, and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

Sec. 5. *Protection of the surface, natural resources, and improvements.* The lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) Causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by the United States or by its grazing permittees or lessees; and upon any partial or total relinquishment or the cancellation or expiration of this lease, or at any other time prior thereto when required by the lessor and to the extent deemed necessary by the lessor, to fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, restore the surface of the leased land to its former condition, including the removal of structures as and if required. The lessor may prescribe the steps to be taken and restoration to be made with respect to lands of the United States and improvements thereon.

Sec. 6. *Removal of equipment, etc., on termination of lease.* Upon the termination of this lease, by surrender or forfeiture, the lessee shall have the privilege at any time within a period of 90 days thereafter of removing from the premises all machinery, equipment, tools and materials, other than underground timbering placed by the lessee in or on the leased lands, which are necessary for the preservation of the mine. Any materials, tools, appliances, machinery, structures, and equipment, subject to removal as above provided, which are allowed to remain on the leased lands shall become the property of the lessor on expiration of the 90-day period or such extension thereof as may be granted because of adverse

climatic conditions, but the lessee shall remove any or all of such property where so directed by the lessor.

Sec. 7. *Proceedings in case of default.* If the lessee shall not comply with any of the provisions of the act or the regulations thereunder or default in the performance or observance of any of the provisions of this lease, and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in section 31 of the act (30 USC, sec. 188). If the lessee fails to take prompt and necessary steps to prevent loss or damage to the mine, property, or premises, or danger to the employees, the lessor may enter on the premises and take such measures as may be deemed necessary to prevent such loss or damage or to correct the dangerous or unsafe condition of the mine or works thereof, which shall be at the expense of the lessee. However, the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

Sec. 8. *Heirs and successors in interest.* Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall insure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. *Unlawful interest.* No Member of, or Delegate to, Congress or Resident Commissioner, after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(1), shall be admitted to any share or part of this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, as amended (41 USC, sec. 22), and sections 431, 432, and 433, title 18, U. S. Code, relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

THE UNITED STATES OF AMERICA

By /s/ Howard M. Grotberg
Howard M. Grotberg
(Signing Officer)

Chief, Minerals Adjudication Section — Jun 13, 1962
(Title) (Date)

Witnesses to the Signature of Lessee

Attest: — Lone Star Steel Company
(Signature of Lessee)

/s/ R. T. Lafferty
Assistant Secretary

By: /s/ Howard Jensen
(Signature of Lessee)
Howard Jensen
Vice President

[Lone Star Corporate Seal]

(Signature of Lessee)

(If this lease is executed by a corporation, it must bear the corporate seal)

[Typed in amendment]

Sec. 2(b) Rental. To pay the lessor in advance an annual rental of $1.00 for each acre or part thereof, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

APPENDIX H

PUBLIC LAW 94-377 [S. 391]; Aug. 4, 1976

FEDERAL COAL LEASING AMENDMENTS ACT OF 1975

For Legislative History of Act, see p. 1943

An Act to amend the Mineral Leasing Act of 1920, and for for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Coal Leasing Amendments Act of 1975".

(b) Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision of the Mineral Lands Leasing Act, the references shall be considered to be made to a section or other provision of the Act of February 25, 1920, entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" (41 Stat. 437).

* * *

Sec. 6. Section 7 of the Mineral Lands Leasing Act (30 U.S.C. 207) is amended to read as follows:

"Sec. 7. (a) A coal lease shall be for a term of twenty years and for so long thereafter as coal is produced annually in commercial quantities from that lease. Any lease which is not producing in commercial quantities at the end of ten years shall be terminated. The Secretary shall be regulation prescribe annual rentals on leases. A lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than $12^{1/2}$ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount

in the case of coal recovered by underground mining operations. The lease shall include such other terms and conditions as the Secretary shall determine. Such rentals and royalties and and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended.

"(b) Each lease shall be subject to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. The Secretary of the Interior, upon determining that the public interest will be served thereby, may suspend the condition of continued operation upon the payment of advanced royalties. Such advance royalties shall be no less than the production royalty which would otherwise be paid and shall be computed on a fixed reserve to production ratio (determined by the Secretary). The aggregate number of years during the period of any lease for which advance royalties may be accepted shall not exceed ten. The amount of any production royalty paid for any year shall be reduced (but not below 0) by the amount of any advance royalties paid under such lease to the extent that such advanced royalties have not been used to reduce production royalties for a prior year. No advance royalty paid during the initial twenty-year term of the lease shall be used to reduce production royalty after the twentieth year of a lease. The Secretary may, upon six months' notification to the lessee cease to accept advance royalties in lieu of the requirement of continued operation. Nothing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) relating to commencement of production at the end of ten years.

"(c) Prior to taking any action on a leasehold which might cause a significant disturbance of the environment, and not later than three years after a lease is issued, the lessee shall submit for the Secretary's approval an operation and reclamation plan. The Secretary shall approve or disapprove

the plan or require that it be modified. Where the land involved is under the surface jurisdiction of another Federal agency, that other agency must consent to the terms of such approval.".

* * *

APPENDIX I

§ 207. Royalties, annual rentals; term of leases; development and operation; readjustment of terms; suspension of operation to avert loss

For the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties as may be specified in the lease, which shall not be less than 5 cents per ton of two thousand pounds, due and payable at the end of each third month succeeding that of the extraction of the coal from the mine, and an annual rental, payable at the date of such lease and annually thereafter, on the lands or coal deposits covered by such lease, at such rate as may be fixed by the Secretary of the Interior prior to offering the same, which shall not be less than 25 cents per acre for the first year thereafter, not less than 50 cents per acre for the second, third, fourth, and fifth years, respectively, and not less than $1 per acre for each and every year thereafter during the continuance of the lease, except that such rental for any year shall be credited against the royalties as they accrue for that year. Leases shall be for indeterminate periods upon condition of diligent development and continued operation of the mine or mines, except where such operation shall be interrupted by strikes, the elements, or casualties not attributable to the lessee, and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods. The Secretary of the Interior may, if in his judgment the public interest will be subserved thereby, in lieu of the provisions herein contained requiring continuous operation of the mine or mines, provide in the lease for the payment of an annual advance royalty upon a minimum number of tons of coal, which in no case shall aggregate less than the amount of rentals herein provided for. He may permit suspension of operations under such lease for not to exceed six months at any one time when market conditions are such that the lease

cannot be operated except at a loss.
Feb. 25, 1920, c.35, § 7, 41 Stat. 439.

§ 188. Failure to comply with provisions of lease

(a) **Forfeiture.** Except as otherwise herein provided, any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or, of the general regulations promulgated under this Act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.
Feb. 25, 1920, ch 85, § 31, 41 Stat. 450.
Amendments:
Act Aug. 8, 1946, substituted "Except as otherwise herein provided, any" for "Any" in the first paragraph of this section;
Act Oct. 15, 1962, designated the first paragraph of this section as subsec. (a).
Note: subsections (b), (c), and (d) apply only to oil and gas.

APPENDIX J

FMC WYOMING CORPORATION,
Plaintiff-Appellee/Cross-Appellant,

v.

Donald P. HODEL, as Secretary of the United States Department of the Interior; Robert F. Burford, as Director of the Bureau of Land Management, United States Department of the Interior; Jim H. Taylor, as Chief, Branch of Solid Minerals, Wyoming State Office, Bureau of Land Management; Marla B. Bohl, as Former Chief, Land and Mining, Wyoming State Office, Bureau of Land Management; Harold G. Stinchcomb, as Former Chief, Branch of Energy Minerals, Wyoming State BLM Office; J. Stan McKee, as Former Acting Chief, Branch of Solid Minerals, Wyoming State Bureau of Land Management; and the United States Department of the Interior,
Defendants-Appellants/Cross-Appellees,

Colorado-Ute Electric Association, Inc.; Northern States Power Company; Peabody Holding Company, Inc.; System Fuels, Inc.; Western Coal Traffic League; Colowyo Coal Company, Amicus Curiae.

Nos. 84-2175, 84-2208.

United States Court of Appeals,
Tenth Circuit.

April 9, 1987.

Rehearing Denied in No. 84-2175
July 8, 1987.

Marilyn S. Kite (Patrick R. Day of Holland & Hart, with her, on the briefs), Cheyenne, Wyo., for plaintiff-appellee/

cross-appellant.

Jean A. Kingrey, Sp. Litigation Counsel, Dept. of Justice (F. Henry Habicht, Asst. Atty. Gen., Robert Klarquist, Atty., Dept. of Justice, of counsel, Lyle K. Rising and Stephen Brown, Office of Sol., Dept. of Interior, with her, on brief), Washington, D.C., for defendants-appellants/cross-appellees.

L. Christian Hauck and John R. McNeill, Montrose, Colo., for amicus curiae Colorado-Ute Elec. Ass'n.

Jack F. Sjoholm, Minneapolis, Minn., for amicus curiae Northern States Power Co.

Terry O'Connor, Denver, Colo., for amicus curiae Peabody Holding Co., Inc. and System Fuels, Inc.

Jon N. Halverson and Charles L. Kaiser of Davis, Graham & Stubbs, Denver, Colo., for Amicus curiae Colowyo Coal Co.

William L. Slover, C. Michael Loftus, Donald G. Avery and Pauline E. Waschek of Slover & Loftus, Washington, D.C., for amicus curiae Western Coal Traffic League.

Before LOGAN, MOORE, and McWILLIAMS, Circuit Judges.

McWILLIAMS, Circuit Judge.

This dispute concerns a readjustment by the Secretary of the Interior of the terms and conditions of two coal leases between the United States and FMC Corporation, a Delaware corporation with its principal place of business in Chicago, Illinois, and qualified to do business in Wyoming. On administrative appeal, the Interior Board of Land Appeals (IBLA) held that the royalty readjustment was timely and that the adjusted royalty rate was lawful. *FMC Corp.*, 74 IBLA 389 (1983). Thereafter, FMC Corporation filed a petition for review in the United States District Court for the District of Wyoming.[1] On cross-motions for summary judgment the district court affirmed, in part, and reversed , in part, the decision of the IBLA, the district court holding that the royalty readjustment was timely but unlawful. *FMC Wyoming Corp. v. Watt,* 587 F.Supp. 1545 (D. Wyo. 1984). Both parties appealed. We affirm, in part, and reverse, in part, the judgment of the district court, holding that the royalty

readjustment was both timely and lawful. This case is a companion case to *Coastal States Energy Co. v. Hodel,* 816 F.2d 502 (10th Cir.1987).

Our starting point is the Mineral Lands Leasing Act of 1920 (MLLA). 41 Stat. 437 (1920), *amended by* 30 U.S.C. § 201 et seq. (1976). That Act provided, *inter alia,* that the Department of Interior could issue leases on federal lands for an indeterminate term to private parties to mine and remove coal at a royalty rate to be fixed by the Secretary, such rate, however, not to be less than five cents per ton of coal and subject to the right of the Secretary to readjust the terms and conditions of the lease, including the royalty rate, at the end of each 20-year period following the issuance of the lease.[2]

On March 1, 1963, the two leases here involved were entered into by the Secretary of the Interior, on behalf of the United States, and FMC. The leases covered land near Kemmerer, Wyoming, now known as the Skull Point Mine. Both leases were made subject to MLLA (1920) and called for called for a royalty payment of 17 1/2 cents per ton of coal while providing for periodic readjustment of the terms and conditions of the leases at 20-year intervals.[3]

On August 4, 1976, the Federal Coal Leasing Amendments Act (FCLAA) was enacted by Congress, which amended

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1. After instituting the present proceeding, FMC Corporation assigned its interest in the two leases to FMC Wyoming Corporation, and the latter was substituted as the plaintiff in this proceeding. However, FMC Wyoming Corporation will hereinafter be referred to as simply FMC.

2. Specifically, Section 7 of MLLA (1920) provided as follows:
[l]eases shall be for an indeterminate period ... upon the further condition that at the end of each 20-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the expiration of such periods.

3. Specifically, both FMC's leases reserved the following right to the lessor:
[t]he right reasonably to readjust and fix royalties payable thereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period.

much of the Act of 1920. 30 U.S.C. § 201 et seq. (1982). FCLAA (1976) included a provision that royalty on a coal lease shall be in such amount as the Secretary shall determine, but not less than 12 1/2% of the value of the coal.[4] 30 U.S.C. § 207 (1982).

The 20-year anniversary date on the two coal leases held by FMC was March 1, 1983. On August 23, 1982, some six months before the March 1, 1983, anniversary date, the Bureau of Land Management (BLM) sent formal notice to FMC of its intent to readjust the terms and conditions of these two leases on their anniversary dates.[5] On December 22,1982, 68 days prior to the March 1, 1983, anniversary date, the terms of BLM's readjustment were sent FMC. Included in these readjustments was a readjusted royalty rate of 12 1/2% of the value of the coal mined. The notice of the adjustments would become effective on March 1, 1983, the 20-year anniversary date of the two leases, but, at the same time, allowed FMC 60 days to file any objections. FMC filed objections on February 11, 1983. These objections were dismissed by the BLM on April 6, 1983. FMC appealed the BLM decision to the IBLA, the latter upholding the BLM's decision on July 29, 1983. 74 IBLA 389 (1983). FMC thereafter sought judicial review of the IBLA's decision in the United States District Court for the District of Wyoming.

No. 84-2208

The district court held that the Secretary's readjustment of the royalty rate in FMC's leases was timely. FMC appeals from that part of the district court's final judgment. We are in

4. Exempted from the 12 1/2% royalty rate was coal recovered by underground mining. The rate for this coal was left to the discretion of the Secretary. 30 U.S.C. § 207 (1982). However as the leases held by FMC cover only surface mined coal, the statutorily set rate of 12 1/2% is the only rate at issue in this case.

5. This notice informed FMC that "the lease terms and conditions will be readjusted under the provisions of 43 C.F.R. § 3451." The cited regulation provided that the lease royalty shall be readjusted to conform to the minimum rate proscribed in § 3473.3-2. 43 C.F.R. § 3451.1(a)(2)(1986). Section 3473.3-2(a)(2) required a royalty of not less than 12 1/2% of the value of the surface mined coal.

accord with the district court's resolution of this matter.

Section 7 of MLLA (1920) stated that "readjustments" may be made "at the end of each 20-year period succeeding the date of the lease...."[6] In line with the provisions in section 7 of MLLA (1920), FMC's leases also reserve to the Secretary the right to readjust the terms and conditions of the lease "at the end of 20 years from the date hereof [the date of the lease]...." As stated, FMC's two leases were dated March 1, 1963, and, accordingly, the 20-year anniversary date for both leases was March 1, 1983. It is uncontested that BLM gave FMC notice on August 23, 1982, over six months before the anniversary date of the two leases, that BLM intended to readjust the terms and conditions of the two leases.

[1] FMC's position on the timeliness issue is that under MLLA (1920) and the leases here involved the *final* decision of the BLM to readjust terms and conditions of an existing coal lease may not occur *after* the 20-year anniversary date of the lease involved. In this case, the *final* action of the BLM readjusting the terms and conditions of FMC's leases occurred on April 6, 1983, 37 days after the anniversary date of the two leases, i.e., March 1, 1983. Thus, argues FMC, the readjustments of the existing leases did not occur "at the end" of 20 years after the date of the lease, as required by MLLA (1920) and the leases themselves.

The Secretary's position is that there is compliance with both the statute and the language of the leases if the notice of intent to readjust is given the lessee *prior* to the 20-year anniversary date.[7] In the instant case, such notice was given

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6. FCLAA's § 6 which replaced § 7 of the MLLA (1920) adopted the same language requiring readjustment to be "at the end of" the applicable term. 30 U.S.C. § 207 (1982).

7. The Secretary has promulgated regulations covering coal lease readjustments. These regulations require notice of intent to readjust prior to the anniversary date but then allow for two years in which to finalize terms. 43 C.F.R. § 3451.1(c)(1986). Prior to being finalized, the Secretary published regulations calling for notice of intent on or before the readjustment date. 44 Fed. Reg. 6832-33 (1979). Although many comments were received, not one suggested that the BLM must complete the readjustment prior to the anniversary date of the lease.

more than six months prior to the 20-year anniversary date. Moreover, the Secretary points out that, though under regulations he was not required to advise the lessee *before* the 20-year anniversary date of the particular readjustments to be made, in the instant case FMC was nonetheless advised of the readjustments, including the increase of the royalty rate to the statutory minimum set forth in FCLAA (1976), on December 22, 1982, 68 days before the March 1, 1983, anniversary date. In connection with the timeliness issue, both FMC and the Secretary rely on *Rosebud Coal Sales Co., Inc. v. Andrus,* 667 F.2d 949 (10th Cir. 1982).

The coal lease in *Rosebud* was entered into on April 5, 1935, and, under MLLA (1920) and the terms of the lease, was subject to readjustment by the Secretary at the end of each succeeding 20-year period. Accordingly, the end of the second 20-year period occurred on April 5, 1975. In *Rosebud,* there was no notice of any sort sent to the coal company by any representative of the Department of the Interior until October 4, 1977, two and one-half years after the expiration of the second 20-year period. On this latter date a notice was sent the coal company by the Department advising the former that the terms and conditions of the existing lease were going to be readjusted to conform with the requirements of FCLAA (1976). The IBLA held that there could be a readjustment of the terms and conditions of Rosebud's lease at a time over two and one-half years after the anniversary date of the lease. California Portland Cement Co., Rosebud Coal Sales Co., 40 IBLA 339 (1979). Rosebud sought judicial review of that administrative decision. The United States District Court for the District of Wyoming held that the lease could not be readjusted two and one-half years after the anniversary date of the lease and reversed the IBLA's decision.

[2] On appeal, in *Rosebud,* we affirmed the district court, stating that the issue was a "narrow one", i.e., "whether by notice given about two and one-half years after the anniversary date the Department has authority to exercise a right given it under the Mineral Leasing Act to readjust the terms of the coal lease." 667 F.2d at 950. Our answer in *Rosebud* to that

narrow issue was that such notice did not give the Department authority to readjust. In so holding, we stated that MLLA (1920) and the lease provisions "provide a right to the government in the nature of an option to make adjustments it considers necessary or to let the opportunity pass." *Id.* at 951. Further, we indicated quite clearly that this option must be exercised in timely fashion, or it is waived by inaction, and that an attempt two and one-half years after the anniversary date to serve notice on the Coal Company of an intent to readjust is not timely. In our view, *Rosebud* strongly suggests that a notice of an intent to readjust terms and conditions of a coal lease given a coal company on or before the 20-year anniversary date preserves the Department's right under MLLA and the lease provisions to readjust the terms within a reasonable time thereafter, and we now so hold.[8]

No. 84-2175

The district court, after holding that the Secretary's readjustment of the royalty rate in FMC's two leases to 12½% of the value of the coal was timely, thereafter held that the readjustment was improper. The Secretary appeals from that part of the district court's judgment. In essence, the district court held that section 6 of FCLAA (1976) even where the anniversary date of the lease was *subsequent* to FCLAA(1976)

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8. In *Rosebud,* notice that there would be readjustments in the terms and conditions of the lease was given the company on October 4, 1977, two and one-half years after the 20-year anniversary date. On November 28, 1977, Rosebud was given the readjusted terms. Rosebud filed objections which were subsequently overruled by the BLM. The decision of the IBLA upholding the ruling of BLM occurred on May 10, 1979 (40 IBLA 339). On judicial review, the focus of the district court, and of this court on appeal, was exclusively on the *date* of notice,and the *date* of final action by BLM was not mentioned, let alone relied on, by either the district court or this court. Rather, as stated, both the district court and this court were concerned only with the *date* of the notice of intent to readjust

Option contracts are usually exercised by giving notice of acceptance. *Restatement (Second) of Contracts,* § 63, comment f (1979); A. Corbin, 1A *Corbin on Contracts,* § 264 (1963) at 600. Hence once the Department has exercised its option to readjust in a timely fashion, it has a reasonable time thereafter in which to set the terms of the lease.

(1976) and that, such being the case, by the terms of FMC's leases any readjustment must be "reasonable" and "should only be altered upon a complete evaluation of all the factors involved in an individual case." We are not in accord with this reasoning or the result reached by the district court.

[3,4] Section 7 of MLLA (1920), set forth above in footnote 2, provides, in effect, that a lease shall be for an indeterminate period at a specified royalty rate, fixed by the Secretary, of not less than five cents per ton, subject to the further condition that at the end of reach 20-year period "such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the expiration of such periods." The leases at issue incorporated this language reserving in the lessor the right to readjust terms and conditions "unless otherwise provided by law." The quoted language in MLLA (1920) incorporated into the leases is of particular importance. To us it quite clearly means that at the end of a 20-year period the Secretary may fix, *inter alia*, such a new royalty rate as he, or she, may determine is proper, unless law in effect at the expiration of such 20-year period provides differently.[9] Applied to the present case, such means that the Secretary on the anniversary date of FMC's leases could increase the royalty rate as he deemed proper, subject, however, to any statutory law in effect on such anniversary date. And statutory law in effect on FMC's anniversary date provided, in essence, that though the Secretary could, as before, change the previously existing royalty rate to one he determined to be proper, the adjusted new rate could not be less than 12 1/2% of

9. We do not interpret the language in MLLA (1920), which was incorporated verbatim in the two leases here involved, as only meaning that the Secretary on an anniversary date may readjust unless the law in effect at the time of readjustment has taken that right away. It no doubt covers that possibility. But in our view it also permits Congress to allow the Secretary to continue to have the right to readjust, but at the same time circumscribe that right by enacting, for example, a revised minimum royalty rate. The power to do the greater includes the power to the lesser.

the value of the coal.[10] Admittedly, this is a drastic increase in royalty rate, but such is a matter for Congress. Further, and importantly, we find nothing in our reading of FCLAA (1976), or in its legislative history, to indicate that FCLAA (1976) was not to be applied to pre-FCLAA coal leases on their post-FCLAA anniversary date.[11]

As stated, FMC's leases generally tracked the language of MLLA (1920) with the addition, however, of the word "reasonable", i.e., the lessors' "right reasonably to readjust." However, we do not regard the use of the word "reasonably" to alter the present situation, since the leases themselves used the additional statutory language "unless otherwise provided by law at the expiration of any such period." And, as indicated, the law as of March 1, 1983, did "otherwise pro-

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10. FMC contends applying FCLAA's terms at readjustment of a pre-FCLAA lease constitutes a retroactive application of the statute. In *Rosebud* we noted that FCLAA was not intended to be retroactive. 667 F.2d at 952. While we continue to adhere to that belief, we are not persuaded that the statute was applied retroactively in this case. In *Rosebud* the lease at issue came due for readjustment over a year before FCLAA was passed by Congress. In contrast FMC's leases could only be readjusted as of March 1, 1983, over six years *after* FCLAA amended the MLLA (1920). The Secretary clearly had the right to set new terms on the readjustment date and it is not a retroactive application of FCLAA to set the new terms in accordance with existing law.

11. To the contrary, there is evidence that FCLAA terms were meant to apply on post-FCLAA readjustments. Specifically when Congress amended portions of FCLAA in 1978 it was aware of Interior's interpretation that FCLAA terms were to be applied at the time of readjustment. See S.Rep. No. 1169 [continued next page] 95th Cong., 2d. Sess. 7 (1978) (In discussing the 1978 modifications of FCLAA's § 3, the report noted that "all leases of course would be subject to the provisions of the 19786 amendments at the expiration of their original lease terms."0; see also *Coal Leasing Amendments,* Hearings on S3189, Before the Subcommittee on Energy Production and Supply, 95th Cong., 2d. Sess. 15 (1978)(statement of Guy Martin, Assistant Secretary of Interior); Letter from Department of Interior, Solicitor's Office, to Senator Jackson (Sept. 12, 1978). Congress' failure to alter this interpretation while amending the statute in other respects indicates that ;legislative intent has been correctly discerned. *Commodity Futures Trading C'mmn. v. Schor,*_____U.S._____, 106 S.Ct. 3245, 3255, 92 L.Ed.2d 675 (1986); *North Haven Board of Education v. Bell,* 456 U.S. 512, 535, 102 S.Ct. 1912, 1925, 72 L.Ed.2d 299 (1982)

vide."[12]

In sum, on the readjusted royalty rate issue, we believe the result reached gives effect to the plain meaning of the applicable statues, which is of course controlling, and at the same time squares with the language used in the leases themselves.

Judgment affirmed in part and reversed in part, and case remanded for further proceedings consonant with this opinion.

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12. FMC argues it is at least entitled to an individualized evaluation of its lease at readjustment. However, as the Secretary was directed by law to raise the royalty rate to at least 12 1/2% of the value of the coal mined, an individualized evaluation could not have produced any result more favorable to FMC. Further Interior does allow objections to be filed and also provides a process by which they may be considered. See 43 C.F.R. § 3452.1-1(d). In addition Congress has provided for individualized rate relief in § 39 when necessary to promote development or to allow the leases to be successfully operated. 30 U.S.C. § 209 (1982). FMC has not yet applied for this relief.

APPENDIX K

COASTAL STATES ENERGY COMPANY,
Plaintiff-Appellant,

v.

Donald P. HODEL, Secretary of the United States Department of the Interior; Robert F. Burford, Director of the Bureau of Land Management, United States Department of the Interior; Robert Lopez, Chief, Minerals Section, Utah State Office of the Bureau of Land Management, United States Department of the Interior; and United STates Department of the Interior, Defendants-Appellees.

Sierra Pacific Power Company; Utah Mining Association; State of Utah; Unelco, Inc., Amicus Curiae.

No. 86-1301

UNITED STATES COURT OF APPEALS,
TENTH CIRCUIT.

April 9, 1987.

Rehearing Denied July 8, 1987.

Lawrence E. Stevens (Patrick J. Garver and Patricia J. Winmill of Parsons, Behle & Latimer, Salt Lake City, Utah; and Brian E. McGee of Parcel & Mauro, Denver, Colo., with him on the briefs), for plaintiff-appellant.

Peter Stirba, Asst. U.S. Atty (Brent D. Ward, U.S. Atty., with him on the brief), Salt Lake City, Utah, for defendants-appellees.

John Madariaga and Margaret A. Manes, Reno, Nev., for amicus curiae Sierra Pacific Power Co.

David L. Wilkinson, Dallin W. Jensen and Michael M. Quealy, Salt Lake City, Utah, for amicus curiae State of Utah.

K. L. McIff of Jackson, McIff & Mower, Richfield, Utah, for amicus curiae Unelco, Inc.

James T. Jensen, Price, Utah, for amicus curiae Utah Mining Ass'n.

Before LOGAN, MOORE and McWILLIAMS, Circuit Judges.

McWILLIAMS, Circuit Judge.

This dispute concerns a readjustment by the Secretary of the Interior of the terms and conditions of two coal leases between the United STates and Coastal STates Energy Company, the latter a Texas corporation which operates an underground coal mine, known as the SUFco Mine, in Sevier County, Utah. On administrative appeal, the Interior Board of Land Appeals (IBLA) upheld, in the main, the readjustments made by the Bureau of Land Management (BLM), holding that the readjustments were timely made and were themselves lawful. Coastal States Energy Co., 70 IBLA 386 (1983). Thereafter Coastal filed a petition for review in the United States District Court for the District of Utah. After discovery, Coastal and the Secretary filed motions for summary judgment. The district court granted summary judgment for the Secretary on all of Coastal's claims, except the third claim.[1] Subsequently, additional-evidentiary matter bearing on the third claim was given the district court. Then, after further hearing, the district court granted the Secretary summary judgment on Coastal's third claim. The district court's opinion entering summary judgment in favor of the Secretary on all of Coastal's claims appear as *Coastal States Energy Co. v. Watt,* 629 F.Supp. 9 (D.Utah 1985). On appeal, we affirm with one exception. The instant case is a companion case to *FMC Wyoming Corporation v. Hodel,* 816 F.2d 496 (10th Cir. 1987).

Coastal, as the successor in interest, holds two leases issued by the Secretary under the Mineral Lands Leasing Act of 1920 (MLLA), 41 Stat. 437 (1920), *amended by* 30 U.S.C. § 201 et seq. (1976), permitting underground coal

[1] Coastal's third claim raised several issues challenging the validity of the Department's 8% royalty readjustment regulations.

mining in Sevier County, Utah. The first lease, designated as the SL lease, was entered into on September 11, 1941. The second lease, designated the U Lease, was executed on March 1, 1962. MLLA (1920) provided that coal leases issued by the Secretary would be for an indeterminate term, but subject to the right of the Secretary to readjust the terms of the lease at the end of each 20-year period following the date of issuance of the lease. 41 Stat. 437, § 7 (1920). In accord with the provisions of MLLA (1920), both of Coastal's leases provided for readjustment of terms and conditions at the end of each 20-year period following the date of issuance of the lease.[2]

Coastal's SL lease had its first 20-year anniversary date on September 11, 1961. At that time the SL lease was readjusted by the Secretary, the readjustment including raising the royalty rate from ten cents to fifteen cents per ton of coal mined.[3]

The second 20-year anniversary date for the SL lease was September 11, 1981. On July 9, 1981, 63 days before the September 11, 1981, anniversary date, BLM sent notice to Coastal of its intent to readjust the terms and conditions of the

Coastal's U lease had its first 20-year anniversary date on March 1, 1982. On October 9, 1981, over five months before the March 1, 1982, anniversary date, the Secretary gave notice to Coastal of his intent to readjust the terms and conditions of the U lease. On December 24, 1981, slightly more than two SL lease.[4] The readjusted terms and conditions of the SL lease

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2 Coastal's SL lease reserved in the lessor "[t]he right to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20 year period during the continuance of this lease unless otherwise provided by law at the time of expiration of any such period." The U lease contained similar language modifying only the "right to readjust" to read "the right reasonably to readjust."

3 The original royalty rate for the SL lease was 15¢ per ton. However during the first 20 years, this rate was reduced to 10¢ per ton as a result of economic hardship.

4 Coastal received a standard notice informing Coastal that its leases would be readjusted to the minimum royalty rate prescribed in Interior's regulations. The notice also stated that the readjusted terms would be sent within two years of the date of the notice.

were sent to Coastal on September 28, 1981. Coastal objected to the readjusted terms and conditions. The BLM, on March 818, 1982, dismissed these objections, and, as above indicated, on February 9, 1983, the IBLA, on administrative appeal, upheld in major and pertinent part the decision of BLM. Coastal States Energy Co., 70 IBLA 386 (1983). months before the March 1, 1982, anniversary date, BLM sent the readjusted terms and conditions to Coastal. Coastal's objections to the readjustments to the U lease were dismissed by the BLM in its decision of March 19, 1982, and BLM's action in regard to the U lease changes was upheld with one minor exception by the IBLA in its decision of February 9, 1983. 70 IBLA 386. Coastal then sought judicial review of the IBLA's decision of February 9, 1983, as such relates to both leases.

I. *Timeliness of the Readjustment*

[1,2] Section 7 of MLLA (1920) provides that a coal lease issued pursuant to the Act shall be for an indeterminate period, but upon the condition that "at the end of each 20-year period" succeeding the original date of the lease the Secretary may readjust the terms and conditions of the original lease. Coastal's two leases contain language tracking the statutory language. In the companion case of *FMC Wyoming Corp. v. Hodel,* 816 F.2d 496 (10th Cir. 1987), we found that notice of intent to readjust the terms and conditions of a coal lease sent on or before the anniversary date preserves the Department's right to readjust the terms within a reasonable time thereafter. Having carefully considered Coastal's arguments to the contrary, we again conclude that the readjustment of Coastal's leases was timely as the Interior duly notified Coastal of its intent to readjust the lease prior to the anniversary dates of the lease.[5]

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5 Coastal also contends that the Interior's own regulations require a final readjustment prior to the anniversary date. We do not agree. A fair reading of 43 C.F.R. § 3451.1 indicates only *notice* is required before the readjustment date. This reading comports with the Secretary's interpretation of the regulation.. See Lonestar [*sic*] Steel Co., 65 IBLA 147 (1982). An agency's interpretation of its own regulation is of controlling weight unless plainly erroneous or inconsistent

II. *Lawfulness of the Readjusted Terms and Conditions*

The BLM readjusted the terms and conditions of Coastal's two leases in several particulars, including the royalty rate increase to 8% of the value of the coal mined, the deletion of the credit against royalty payments for rental payments, the substitution of monthly royalty payments for quarterly payments, increased bond requirements, and change of the readjustment intervals from 20 to 10 years. Coastal puts in issue the lawfulness of all these readjustments, with particular emphasis, of course, on the royalty increase.

Our starting point in this discussion is MLLA (1920), which was the statutory authority under which the present leases were issued by the Secretary. Section 7 of that Act provided as follows:

> Leases shall be for an indeterminate period ... upon the further condition that at the end of each 20-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the expiration of such periods.

Both of Coastal's leases incorporated the language of this statute.

[continued from previous page] with the regulation. *U. S. v. Larionoff*, 431 U.S. 864, 97 S.Ct. 2150, 53 L.Ed.2d 48 (1977).

Nor do we find the regulations governing the timing of readjustments to be arbitrary or capricious. As found by the district court, the challenged regulations were published by the Secretary and comments were received. However, not one comment suggested the readjustment must be final prior to the readjustment date. *Coastal States Energy Co. v. Hatt*, 629 F. Supp. 9, 17-19 (D.Utah 1985). Further the Secretary justified its requirement of notice as assuring "timely and competent administration of leases by the self-imposition of the sanction of waiver: thus :"guaranty[ing] accountability." 44 Fed. Reg. 42601-02 (1970). The scope of review under the arbitrary and capricious standard is narrow and this court may not substitute its judgment for that of the agency. *Motor Vehicle Manufacturer's Ass'n v. State Farm Mutual Automobile Insurance*, 463 U.S. 29, 103 S.Ct. 2856, 2866, 77 L.Ed 2d 443 (1983). In short we find no basis for Coastal's contention.

[3] As we stated in *FMC Wyoming Corp., supra,* section 7 of the Act, *inter alia*, clearly advises the lessee coal company that at the end of 20 years the Secretary is empowered to readjust the terms and conditions of the coal lease as he, or she, may determine. This is, of course, a very broad authority which Congress saw fit to grant to the Secretary, an authority which is only subject to the proviso "unless otherwise provided by law at the expiration of such [twenty-year] periods." So, at the end of 20 years, the Secretary may readjust as he, or she, determines, unless the statutory law in effect on the 20-year anniversary date provides, for example, that a particular term be included in the lease.[6] As we found in *FMC Wyoming Corp., supra*, the passage of FCLAA (1976) established such statutory law, setting forth the minimum provisions for federal coal leases. Such being the case, the Secretary in readjusting the terms and conditions of Coastal's leases was required to act in conformity with FCLAA (1976).

Although, as indicated, the Secretary readjusted several significant terms and conditions of the SL and U leases on their 20-year anniversary dates, primary focus is on the increased royalty rate. On the anniversary date of each lease Coastal was paying, and for the prior 20 years had been paying, a royalty rate of fifteen cents per ton of coal mined. Although MLLA (1920) empowered the Secretary to originally determine and fix the royalty rate, it also provided that such rate should not be less than five cents per ton. FCLAA (1976), in effect, reaffirmed the authority of the Secretary to determine and fix the royalty rates of coal leases, but also provided that such rate must be "not less than twelve and one-half per centum of the value of the coal ..., except that the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." Acting pursu-

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[6] We do not interpret the language in MLLA (1920), which was incorporated verbatim in the two leases here involved, as only meaning that the Secretary on an anniversary date may readjust unless the law in effect at the time of readjustment has taken that right away. It no doubt covers that possibility. But in our view it also permits Congress to allow the Secretary to continue to have the right to readjust, but at the same time, circumscribe that right by enacting, for example, a revised minimum royalty rate. The power to do the greater includes the power to do the lesser.

ant to this statute, the Department published a regulation which reads as follows:

> A lease shall require payment of a royalty rate of not less than 9 percentum of the value of the coal removed from an underground mine, except that an authorized office may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

43 C.F.R. § 3473.3-2(a)(3)(1979).

The BLM interpreted the foregoing regulation as meaning that on the anniversary dates of Coastal's underground coal leases the Minerals Management Service had no authority to recommend a royalty rate less than 8% of the value of the coal mined, and in its decision said so in just so many words. BLM went on to add that if Coastal felt the 8% rate to be excessive, its only avenue of relief was to file an application for temporary royalty rate reduction under section 39 of MLLA.[7] See 30 U.S.C. § 209 (1982).

The IBLA, upholding, on appeal the ruling of the BLM that under the applicable regulations Coastal's royalty rate must be initially readjusted to 8% of the value of the removed coal, rather than a lesser figure, quoted the following language with approval:

> Departmental regulation 43 CFR 3473.3-2 provides two ways of granting underground coal lessees relief from the statutory 12 1/2 percent royalty. Subsections (a)(1) and (a)(3) implement 30 U.S.C. § 207(a)(1976) and provide that a rate as low as 5 percent may be determined at lease issuance.... Alternately, the Department may establish a royalty rate in the lease and provide relief after lease issuance upon application of the lessee under subsection (d), which implements 30 U.S.C. § 209(1976). Appellant has not persuaded us that it is unreasonable to establish an 8 percent

[7] Section 39 allows the Secretary to reduce or waive a royalty rate whenever he or she judges it necessary in order to promote development or allow the lessee to successfully operate. This power has existed since 1946 and was not altered by FCLAA (1976). See 60 Stat. 957 (1946); 30 U.S.C. § 209 (1982).

> royalty rate in the lease now, since the rate may temporarily be reduced later if conditions warrant. If a lower rate is put into the lease now and economic conditions change favorably during the term of the lease, there will be no opportunity for upward adjustment of the royalty figure until the lease is again ripe for readjustment. The method chosen by BLM thus assures the United States a fairer return over the life of the lease, provides appellant some relief from the statutory $12^{1/2}$ percent rate, yet affords appellant n opportunity for further royalty relief when it is really needed. We previously have affirmed BLM decisions denying special royalty relief at lease readjustment, requiring lessees to seek such relief under 43 CFR 3473.3-2(d). *Lone Star Steel Co.*, 65 IBLA 147 (1982); *Garland Coal and Mining Co.*, 49 IBLA 400 (1980).

Coastal States Energy Co., 70 IBLA 386, 393 (1983)(*quoting* Blackhawk Coal Co., 68 IBLA 96, 99 (1982).

As mentioned at the outset, the district court on review of the decision of IBLA initially denied the Secretary's motion for summary judgment on Coastal's third cause of action, which concerned the imposition of the 8% royalty rate on coal recovered in underground mines. Subsequently, after a more complete rule making record was presented to the district court, the district court granted the Secretary's motion for summary judgment on the third cause of action and upheld the readjusted royalty rate of 8%. In its opinion, the district court carefully analyzed the matter and concluded that initially fixing Coastal's royalty rate at 8% was proper and noted that there was a procedure whereby Coastal could later seek review and relief if it could justify a lesser rate. *See* 629 F.Supp. 9 at 29-33 (D.Utah 1985). We are in general accord with the district court's handling of this matter with one conceivably important exception.

The exception concerns the authority of the Minerals Management Service, in the instant case, to consider on the anniversary date of Coastal's underground mine leases a royalty rate less than 8% of the value of the coal mined. The

regulation in the first instance requires that the royalty rate shall not be less than 8% of the value of the coal mined, but the same regulation in the next breath goes on to state that, notwithstanding the 8% figure, "an authorized officer may determine a lesser amount, but in no case less than 5% if conditions warrant." BLM, IBLA, and the district court have all held that, notwithstanding, the rather clear language of the regulation, the royalty rate on the anniversary date of a coal lease must be readjusted to 8%. Agency interpretation of its own regulations is to be accorded judicial deference, but, at the same time, the courts should require agency action to conform to its own rules and regulations.

[4] As applied to the instant case, Coastal suggests that, assuming the applicability of FCLAA (1976), under the regulation any mandatory minimum royalty rate is 5%, not 8%, of the value of the coal mined. We reject that suggestion. However, we agree with Coastal that it is error for the BLM to automatically fix the readjusted royalty rate for all underground coal at 8%. Such completely ignores the ensuing proviso in the same regulation that a lesser amount, but not less than 5%, may be set, "if conditions warrant."

[5] Subsequent to IBLA's decision in the instant case, the IBLA recently held that Minerals Management Service, now succeeded by BLM, has the authority to set a royalty rate for underground coal at less than 8% in readjusting an existing coal lease. In Utah Power & Light, 80 IBLA 180 (1984), the BLM "admitted" that the regulations do allow a royalty rate of less than 8% to be placed on a readjusted underground coal lease "if conditions warrant." IBLA agreed with BLM and remanded the case there before it to the BLM for further consideration. This particular pronouncement of IBLA is in accord with our reading of the regulations.[8]

[6] As indicated, the readjusted royalty rate was not the only issue raised by Coastal in its petition for review, although it was perhaps the principal one. However, having concluded

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[8] In other decisions, however, the IBLA has reaffirmed the position taken in *Coastal*. See, e.g., Kanawha & Hocking Coal & Coke Co., 93 IBLA 179 (1986); Consolidation Coal Co., Chevron Coal Development Co., 86 IBLA 60 (1985).

that FCLAA (1976) has application to the Secretary's readjustment of the terms and conditions of Coastal's two leases, it follows that Coastal's other claims concerning terms mandated by FCLAA(1976) applied to pre-FCLAA leases on their post-FCLAA anniversary date under which the leases were issued. See *FMC Wyoming Corp., supra.* Such was the intent behind FCLAA(1976) and such intent is in accord with MLLA(1920). Other action by the Secretary in readjusting Coastal's leases not mandated by FCLAA(1976) is, in our view, a reasonable exercise of the Secretary's broad authority to readjust.[9]

Judgment affirmed, except for that part of the judgment which upheld the IBLA's decision that on the anniversary dates of Coastal's two leases the royalty rate had to be set at 8% of the value of the coal mined, and that a lesser figure could not even be considered. That part of the judgment only is reserved, and that particular matter only shall, by order of the district court, be remanded to IBLA with direction that further proceedings be in accord with this opinion.[10]

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9 FCLAA did not specifically address the following terms which Coastal contends are unreasonable: the increased bonding requirement; the change from monthly to quarterly rental payments and, the deletion of a right to credit rental payments against royalty payments. As noted in *Rosebud* , under MLLA (1920) and the lease language, the Secretary possesses a "very broad power to make changes considered to be in accordance with the proper administration of the lands." *Rosebud Coal Sales Co., Inc. v. Andrus,* 667 F. 2d 949, 951 (10th Cir. 1982). Coastal contends this power is limited by its lease language to "reasonable" changes. As discussed, under the MLLA (1920) and the leases themselves, the Secretary's power is limited where the terms "are provided by law." As to those terms not so provided, Coastal has merely asserted that they are unreasonable without providing any basis for its claims. We do not agree and hence affirm the readjustment of these leases.

10 We do not reach the issue of whether failure to notify the attorney general of the readjustment as required by 30 U.S.C. § 184(1)(2)(1982) rendered the readjusted lease unlawful. We agree with the district court that the issue was waived as Coastal did not present it in the administrative proceedings below. In spite of Coastal's claim that the action violated the specific language of the statute, we find no exceptional circumstances justifying judicial review of this issue. *Hormel v. Helvering,* 312 U.S. 552, 557, 61 S.Ct. 719, 721, 85 L.Ed. 1037 (1941); see also, *Sunray Mid-Continent Oil Co. v. FPC,* 364 U.S. 137, 157, 80 S.Ct. 1392, 1403, 4 L.Ed.2d 1623 (1960); *U.S. v. L.A. Tucker Truck Lines,* 344 U.S. 33, 73 S.Ct. 67, 97 L.Ed. 54 (1952) .

APPENDIX L

Title 43--Public Lands. Code of Federal Regulations
Chapter II--Bureau of Land Management

Subpart 3451--Continuation of Leases--Readjustment of Terms

§3451.1 Readjustment of lease terms.

(a) (1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and, if the lease is extended, each 10-year period thereafter.

(2) Any lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section.

(3) Each lease shall be readjusted to provide that it is subject to the unsuitability criteria set out in Subpart 3461 of this title.

(b) The authorized officer shall notify the lessee whether or not any readjustment of terms and conditions is to be made. If feasible, the authorized officer shall so notify the lessee of any lease which becomes subject to readjustment prior to June 1, 1980, before the expiration of the current 20-year period.

(c) If the lease became subject to readjustment of terms and conditions before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee whether or not a readjustment would be made, the terms and conditions of that lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976, and to conform to the provisions for diligent development and continued operation in § 3475.6 of this title.

(d)(1) The authorized officer shall, prior to the expiration of the current or initial 20-year period or any succeeding 10-year

period thereafter, notify the lessee of any lease which becomes subject to readjustment after June 1, 1980, whether any readjustment of terms and conditions will be made prior to the expiration of the initial 20-year period or any succeeding 10-year period thereafter. On such a lease the failure to so notify the lessee shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

(2) In any notification that a lease will be readjusted under this subsection, the authorized officer shall prescribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

(e) In the notification that the lease will be readjusted, the authorized officer may require the lessee to furnish information specified in § 3422.3-4 of this title for review by the Attorney General as required by section 27(1) of the Mineral Leasing Act of 1920, as amended. If the authorized officer requests the information specified, no lease readjustment shall be effective until 30 days after the authorized officer has transmitted the required information to the Attorney General. The lease shall be subject to cancellation if the lessee fails to furnish the required information within the time allowed.

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the proposed readjusted lease terms, the authorized officer shall, within the time specified in the notice that the lease will be readjusted, notify the lessee of the proposed readjusted lease terms.

(b) The notification of readjusted lease terms shall also notify the lessee that if he does not file either an objection to the proposed readjustment or a relinquishment of the lease within 60 days after receipt of notice of the proposed readjusted terms from the authorized officer, the terms of such

readjustment shall be considered agreed upon.

(c) The notification of readjusted lease terms shall specify the procedures to be followed if the lessee objects to the proposed readjusted lease terms.

(d) The readjusted lease terms shall become effective either 60 days after the lessee is notified of them, or 30 days after the authorized officer transmits the required information to the Attorney General, whichever is later.

(e) In any case of an appeal from the notice of readjusted lease terms, the authorized officer may, consistent with 43 CFR 4.21(a), provide that the decision is effective pending the outcome of the appeal.

Title 43--Public Lands. Code of Federal Regulations (1977)
Chapter II--Bureau of Land Management

§ 3522.2-1(b)

If the date on which a coal lease became liable for readjustment of terms, \and conditions occurred before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee that no readjustment would be made, the terms and conditions of the lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1975.

[41 FR 56646, Dec. 29, 1976]

[Page 126]

APPENDIX M

CODE OF FEDERAL REGULATIONS (1954)
Title 43--Public Lands: Interior.
Chapter I--Bureau of Land Management

§ 193.16 *Readjustment of terms and conditions at end of twenty-year periods.* The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after the receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period.

CODE OF FEDERAL REGULATIONS (1974)
Title 43--Public Lands: Interior.
Chapter II--Bureau of Land Management

§ 3522.2-1. Coal, potassium and phosphate leases are issued subject to readjustment of the terms and conditions of the lease at the end of each 20-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after the receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such 20-year period.

APPENDIX N

ROSEBUD COAL SALES COMPANY, INC.,
Plaintiff-Appellee,

v.

Cecil D. ANDRUS, Secretary of the Department of the Interior, et al.,
Defendants-Appellants.

No. 80-1842

United States Court of Appeals,
Tenth Circuit.

Argued and Submitted July 13, 1981.

Decided Jan. 8, 1982.

[667 F.2d 950]

Jerry Jackson, Atty., Appellate Section, Land and Natural Resources Div., U.S. Dept. of Justice, Washington, D.C (Sanford Sagalkin, Deputy Asst. Atty Gen., Anthony C. Liotta, Acting Asst. Atty. Gen., Dirk D. Snel and Margaret M. McMahon, Attys., U.S. Dept. of Justice, Washington, D.C., with him on the briefs), for defendants-appellants.

William E. Murane, of Holland & Hart, Denver, Colo. (Marilyn S. Kite, of Holland & Hart, Laramie, Wyo., Kenneth D. Hubbard, Gerald J. Schissler, Paul D. Phillips, and Julian M. Izbiky, of Holland & Hart, Denver, Colo., with him on the briefs), for plaintiff-appellee.

Russell S. Jones, Denver, Colo., for amicus curiae Beaver Creek Coal Co.

Robert G. Holt, of Martineau, Rooker, Larsen & Kimball, Salt Lake City, Utah, for amicus curiae Eureka Energy Co.

High C. Garner and William B. Prince, Salt Lake City, Utah, for amicus curiae Franklin Real Estate Co.

M. William Tilden, of Gresham, Varner, Savage, Nolan & Tilden, San Bernardino, Cal., for amicus curiae Kaiser Steel Corp.

Russell H. Carpenter, Jr. and David N. Heap, Washington, D.C., for amicus curiae Rocky Mountain Energy Co.; Kenneth R. Oldham, Broomfield, Colo., and Covington & Burling, Washington, D.C., of counsel.

Before SETH, Chief Judge, McWILLIAMS, Circuit Judge, and BROWN,* District Judge.

SETH, Chief Judge.

The plaintiff sought review of an administrative decision by the Interior Board of Land Appeals which held that the Department of Interior could readjust the terms of a coal lease issued to a predecessor of plaintiff at a time after the anniversary date of the lease. The United States District Court for the District of Wyoming held that the lease could not then be readjusted and reversed the decision of the Interior Board of Land Appeals. The issue came before the trial court on cross motions for summary judgment. The Department of Interior has taken this appeal.

The issue is a narrow one, and presents the question whether by a notice given about two and one-half years after the anniversary date, the Department has authority to exercise a right given it under the Mineral Leasing Act to readjust the terms of a coal lease. This lease is C-057086 issued by the Department of Interior dated April 5, 1935 covering about two sections of land in Carbon County, Wyoming. Coal leases at that time were issued for an indeterminate term and contained a provision that at the end of each twenty-year period succeeding the date of the lease the Secretary of Interior could readjust the terms, royalties and conditions.

*Honorable Wesley E. Brown, United States District Judge for the District of Kansas, sitting by designation.

[1] We apply the typical scope of review to the agency action, *Ballard E. Spencer Trust, Inc. v. Morton,* 544 F. 2d 1067 (10th Cir.), and agree with the trial court as to the proper content of the administrative record. The Interior Board of Land Appeals made no factual determination and no evidentiary hearing was held.

Section 3 of the coal lease in issue provides in part:

> "It is mutually understood and agreed that the lessor shall have the right to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof, and thereafter at the end of each succeeding 20-year period during the continuance of this lease...."

[667 F.2d 951]

A time thus stated when the Government can "readjust" the royalty and other terms--at the end of each twenty-year period. This provides a right to the Government in the nature of an option to make adjustments it considers necessary or to let the opportunity pass. The scope or nature of the changes is not limited and there thus exists a very broad power to make changes considered to be in accordance with the proper administration of the lands. This opportunity comes at intervals albeit long but so prescribed by Congress. The Secretary, of course, need not take any action at all under the lease provisions.

As might be expected, the lease adopted the statutory language of the Mineral Lands Leasing Act (30 U.S.C. § 207). The Act then provided that the Secretary of Interior could readjust the terms of the lease "at the end of each twenty-year period succeeding the date of the lease." It is apparent that the lease incorporates the provisions of the Act in any event.

The regulations applicable to coal leases before and on April 5, 1975, which date marked the end of the second twenty-year period of the lease, had a like provision (43 C.F.R. § 3522-1, 1974):

> "Coal, potassium and phosphate leases are issued subject to

> readjustment of the terms and conditions of the lease at the end of each 20-year period succeeding the date of the lease.... The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made.... Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such 20-year period."

The time set for readjustment by the regulations was thus again "at the end of each 20-year period." The regulation added the provision as to notice, an item not included in the contract nor ion the Act. The "anniversary date" as used herein means the end of each twenty-year period following the date of the lease.

[2] The lease agreement was entered into by the Department in administering the public lands. *United States v. Essley*, 284 F.2d 518 (10th Cir.). The lease and the transactions in connection therewith created a commercial relationship. *United States v. Ohio Oil Co.*, 163 F.2d 633 (10th Cir.). The Secretary, before the trial court, asserted that he was seeking in this transaction to "deal realistically in a business context." We should, as did the trial court, consider the entire contract in the context suggested by the Secretary. We must also consider the entire contract in the context of the Mineral Lands Leasing Act and the regulations. In *United States v. Essley*, 284 F.2d 633 (10th Cir.), in determining the meaning of an oil and gas lease under the Mineral Lands Leasing Act, we used the typical contract law doctrines applicable to commercial transactions. *See also United States v. Seckinger*, 397 U.S. 203, 90 S.Ct. 880, 25 L.Ed.2d 224, and *In Re Murdock Mac. & Eng. Co. of Utah*, 620 F.2d 767 (10th Cir.).

[3] In so considering all the contract provisions, and in an application of the ordinary meaning to the terms, it is no difficult to reach the conclusion that the readjustment was to be when each twenty-year period expired, on that date and not at a later time. The statement of time "at the end of" on its face is not susceptible to any variation as it is a precise time. Furthermore, as mentioned above, it is presented as an option to the Government to make the changes it considers necessary

or not to act at all. Since such broad discretion is given, and considering the nature of the mining business, it might be expected that the time to act was precisely fixed and set at infrequent intervals. There is no legislation history to suggest any variation on the ordinary meaning nor to indicate that a fixed time provision was not to be considered of the essence. It was a provision selected by Congress and repeated from time to time.

We thus fully agree with the trial court's construction of this provision of the lease. Thus the answer would appear to be clear by the application of typical doctrines of contract law in a typical business context. But is there any room for exceptions or variations, or are there any circumstances [667 F.2d 952] leading us to other than ordinary consequences?

The Governments argues on this point that it did not take action in this instance to give notice or to readjust because it was otherwise occupied with matters of basic policy on coal leasing. The record demonstrates that the Department was busy; however, this cannot be advanced as a valid reason for not acting at the end of the term. There was a moratorium on new leases, but the record clearly shows that the moratorium and the policy reviews pertained only to new leases and could only pertain to new leases. During the moratorium period (1970-1975) the Department adjusted the provisions of more than ten coal leases. The moratorium cannot be advanced as a reason why action should not have been taken by the Department had it been desired.

The time for readjustment of coal lease terms comes so infrequently that it must be assumed that timely consideration is given in the ordinary administrative process. If no action is taken by the Government for an extended time it is reasonable to assume that a decision was made not to take advantage of the opportunity provided by the Mineral Lands Leasing Act. Thus a continuation of the old royalty rate and other lease provisions can be considered a choice then made by the administration. When such a choice was made we find no provisions in the Act nor in the regulations permitting the

Department to reverse the position it took originally at the prescribed time.

The record demonstrates, as the trial court found:

> "Data submitted by Interior suggests that the historic practice of the agency was to readjust leases at the end of the readjustment period, or very soon thereafter. The list of coal lease readjustments occurring from January 1, 1960 to August 4, 1976 indicates that the majority of the leases were readjusted within days of the readjustment date and a substantial number received readjustment notices before the readjustment date expired. Further, on at least fifty-three occasions dating back to 1965, Interior had permitted the readjustment date to pass without providing either notice of readjustment *or* notice that no readjustment would occur." (Emphasis in original).

Thus as to other coal leases in the prior sixteen years, it was not uncommon for the Department to take no action when it was decided not to readjust. The timing of the readjustments made in prior years, as indicated by the trial court, does not demonstrate a substantial variation from the exact day. The record does not show what other readjustments were consented to as was a prior adjustment in the lease in question.

The Government urges as an added factor that there were changes in the Mineral Lands Leasing Act provisions as to coal in August 1976 (90 Stat. 1087). These in Section 7 are not particularly significant as to the issues except there is a repetition of the readjustment option "at the end of the primary term of twenty years and at the end of each ten-year period thereafter." The Section 7 amendment provided for a primary term and also for the royalty to be not less than 12.5%. There is no suggestion whatever that the amendment was to be retroactive and the contrary is indicated.

There was no published ruling or regulation that the agency had construed "at the end of" to mean after the end of although there were scattered instances of notices having been sent by

the Department after the lease anniversary. *See Commissioner v. P.G. Lake, Inc.*, 356 U.S. 260, 78 S.Ct. 691, 2 L.Ed. 2d 743, and see the trial court's finding quoted above. There was no construction of the statute by the agency.

Following the amendment to Section 7 in 1976 the Department undertook to change the regulation by publication on December 29, 1976. (43 C.F.R. § 3451.1(c).) This change was directed to readjustment before August 4, 1976 and which had not been readjusted. It provided that these leases be readjusted "to conform to the requirements [667 F.2d 953] of the Federal Coal Leasing Amendments Act." Pursuant to the retroactive regulation the Department sent notices on October 4, 1977 to plaintiff that its lease would be readjusted and so precipitated this suit. As mentioned, the trial court held that this readjustment came too late--some two and one-half years after the expiration of the twenty-year period--and the new regulations were not within the terms of the statute. We must agree.

The Government made no showing that the giving of notice at or before the anniversary date was not "feasible." The trial court found:

> "The record discloses no reason why notice was not given to Rosebud prior to the readjustment date in compliance with the regulation or why it was not feasible to do so."

The court also found:

> "The Bureau of Land Management's consideration of the readjustment of Rosebud's coal lease began on September 5, 1974, seven months prior to the readjustment date of April 5, 1975 by the requesting of recommendations and reports from the United States Geological Survey regarding the readjustment. The government could easily have notified Rosebud on April 5, 1975 at least that it intended to readjust the terms of its lease."

The failure to give notice in 1975 without a reason to demonstrate it was not "feasible" must constitute a failure by

the Department to follow its own regulations had an adjustment been contemplated. We do not assume that the Department would fail to follow its regulations, but in view of the record we could very well assume, as mentioned above, that the date was passed because it had determined that no adjustment was to be made.

Thus we must conclude that the Department 's attempt by retroactive regulations and by a belated notice to readjust the coal lease in issue was outside of the statutory authority of the Department and contrary to the terms of the lease. The opportunity to adjust the lease pursuant to the Mineral Leasing Act was presented but the Department chose to forego it.

We express no opinion as to the reasonableness of royalty rate.

AFFIRMED.

TABLE 1

Federal Coal Lease Terms Before and After Enactment of Federal Coal Leasing Amendments Act (1976) Amending Mineral Lands Leasing Act (1920)

Lease Term	MLLA Original Lease	FCLAA Readjusted Lease
Royalty	Fixed dollar/ton	12.5% ad valorem
Period	Indeterminate	Fixed with extensions
Readjustment		
1. Interval	Every 20 years	Every 10 years
2. Type	Individual tailoring	Blanket, no tailoring
3. Process	In force at issuance	In force at readjustment
4. Limits	Reasonable	Unlimited
Rental/Acre	Credit against royalty	No credit against royalty
LMUs*	Not subject	Automatic pooling
Production	No timetable/Amount	10 years/Commercial
Development	Diligent (ton amount)	10 years or terminated
Laws Applied	In force at issuance	Automatic incorporation
Regulations	In force at issuance	Automatic incorporation

Note: Some of the above requirements were added by regulation only as within the Secretary of the Interior's discretion.

* Logical Mining Unit, mechanically applies pooling requirements of all reserves on an LMU for production quotas.

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No. 88-1962

In the Supreme Court of the United States

OCTOBER TERM, 1989

EAST TEXAS STEEL FACILITIES, INC., PETITIONER

v.

MANUEL LUJAN, JR., SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's contract rights were impaired when, pursuant to the provisions of the Federal Coal Leasing Amendments Act of 1976, Pub. L. No. 94-377, 90 Stat. 1083, the Secretary of the Interior gave notice of his intent to adjust the terms and conditions of existing federal coal leases prior to the expiration of the 20-year anniversary dates of the leases, but did not specify the new terms or implement them until shortly after the anniversary dates had passed.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	4
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Bowen v. *Public Agencies Opposed to Social Security Entrapment,* 477 U.S. 41 (1986)	5-6
Coastal States Energy Co. v. *Hodel,* 816 F.2d 502 (10th Cir. 1987)	4
FMC Wyoming Corp. v. *Hodel,* 816 F.2d 496 (10th Cir. 1987), cert. denied, 108 S. Ct. 722 (1988)	4, 5, 6, 7
Sinking-Fund Cases, 99 U.S. 700 (1879)	5

Constitution, statutes and regulations:

U.S. Const. Amend. V (Takings Clause)	5
Federal Coal Leasing Amendments Act of 1976, Pub. L. No. 94-377, 90 Stat. 1083	2
§ 6, 90 Stat. 1087	2, 3
Mineral Lands Leasing Act of 1920, ch. 85, 41 Stat. 437	2
§ 7, 41 Stat. 439-440	2, 4, 6
30 U.S.C. 207 (1958)	2
30 U.S.C. 207 (1982)	2
43 C.F.R.:	
Section 193.16 (1954)	3, 5
Section 3451.1(d) (1979)	3
Section 3522.2-1 (1978)	3

Miscellaneous: Page

122 Cong. Rec. (1976):
p. 489 6
p. 25,464 6
S. Rep. No. 1169, 95th Cong., 2d Sess. (1978) 6

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-3a) is unreported. The opinion of the district court (Pet. App. 5a-12a) is unreported. The opinions of the Interior Board of Land Appeals (Pet. App. 13a-20a, 21a-37a) are reported at 65 I.B.L.A. 147 and 71 I.B.L.A. 92.

JURISDICTION

The court of appeals entered its judgment on November 23, 1988. A petition for rehearing was denied on February 17, 1989. Pet. App. 2a-3a. The petition for a writ of certiorari was filed on May 17, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Department of the Interior, Bureau of Land Management (BLM), issued five coal leases to Lone Star Steel Company (Company) during the period between June 1959 and May 1962 pursuant to the Mineral Lands Leasing Act of 1920 (MLLA), ch. 85, 41 Stat. 437. Section 7 (41 Stat. 439-440) of that Act then provided that leases were for "indeterminate periods," but that "at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods." 30 U.S.C. 207 (1958). The terms of the Company's leases reflect this statutory provision. Under each lease, the United States expressly reserved "[t]he right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease unless otherwise provided by law at the time of the expiration of any such period." Pet. App. 5a, 128a, 137a, 146a, 150a-153a (assignment agreement), 159a.

In 1976, Congress enacted the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Pub. L. No. 94-377, 90 Stat. 1083. Section 6 (90 Stat. 1087, codified at 30 U.S.C. 207 (1982)) of the FCLAA amended Section 7 of the MLLA in several respects. Notably, for example, the FCLAA raised the floor on royalty rates. The Secretary must now "require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations." *Ibid.* Under the FCLAA, "rentals and royalties and other terms

and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended." *Ibid.*

2. At the time each lease was issued, the Department of the Interior regulations controlling issuance of leases under the MLLA provided that notice of proposed readjustments be given, whenever feasible, before the expiration of each 20-year term. 43 C.F.R. 193.16 (1954). The regulations were amended after passage of the FCLAA to require notification of the intent to readjust prior to the anniversary date. 43 C.F.R. 3451.1(d) (1979); see also 43 C.F.R. 3522.2-1 (1978) (effective before July 19, 1979) (requiring notice before expiration of 20-year period where feasible). Consistent with the notice requirements of the regulations, the BLM notified the Company in advance of the 20-year anniversary of each lease that the lease would be readjusted.* Pet. App. 49a-56a. The readjusted terms and conditions were sent to the Company in the case of four of the leases after the anniversary dates of the leases. See Pet. App. 9a. The readjusted terms of each lease incorporated provisions of Section 6 of the FCLAA. Pet. App. 57a-122a.

The Company filed objections to each readjustment. In each instance, the BLM upheld the readjustment. Pet. App. 10a. The Company then appealed to the Interior Board of Land Appeals (IBLA). The IBLA issued its opin-

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* As found by the district court (Pet. App. 9a), the relevant dates for each lease are as follows:

Lease No.	20-yr. Anniversary	Notice of Intent To Readjust
NM 059992 OK	06-01-79	02-09-79
NM 050405 OK	12-01-79	02-09-79
NM 050406 OK	12-01-79	02-09-79
NM 059996 OK	04-01-80	11-19-79
BLM-C-018820 OK	05-01-82	10-30-81

ion on June 29, 1982, *Lone Star Steel Co.*, 65 I.B.L.A. 147, affirming the BLM readjustment. Pet. App. 13a-37a. The Company appealed the IBLA decisions to the United States District Court for the Eastern District of Oklahoma. On June 30, 1986, the district court affirmed the propriety of the readjustment. Pet. App. 5a-12a. The Company appealed.

3. The court of appeals affirmed. Pet. App. 1a. It rejected the Company's arguments (1) that the Department of the Interior had waived its right to readjust the leases by providing only notice of the intent to readjust rather than the actual terms of the readjustment prior to the 20-year anniversary of the leases and (2) that the FCLAA does not apply to pre-FCLAA leases at post-FCLAA readjustments. The court found that the Company had failed to distinguish the issues in this matter from the issues raised in *FMC Wyoming Corp.* v. *Hodel,* 816 F.2d 496 (10th Cir. 1987), cert. denied, 108 S. Ct. 772 (1988), and *Coastal States Energy Co.* v. *Hodel,* 816 F.2d 502 (10th Cir. 1987).

ARGUMENT

The court of appeals correctly determined that the issues raised here are substantially similar to those resolved in *FMC Wyoming Corp.* v. *Hodel, supra.* As was the case there, the decision is correct and does not conflict with any decision of this Court or of any other court of appeals. Accordingly, review by this Court is similarly not warranted here.

1. Contrary to petitioner's assertion (Pet. 15, 17-19), neither the government's actions here nor the court of appeals' decision impairs the Company's contract rights. Section 7 of the MLLA provided that a lease should last an indeterminate period at a royalty rate fixed by the Secretary of the Interior, subject to the condition that at the end of

each 20-year period such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the expiration of such periods. The regulations of the Department of the Interior and the Company's leases echoed this provision, expressly reserving to the Secretary the right to readjust the terms and conditions of each lease at its 20-year anniversary. "Notice of the proposed readjustments [was to] be given, whenever feasible, before the expiration of each such twenty-year period." 43 C.F.R. 193.16 (1954); see Pet. App. 128a, 137a, 146a, 159a. Here, the BLM gave notice of its intent to readjust the terms and conditions of the leases in every case before the anniversary date. See note*, *supra*. The court of appeals therefore correctly determined that there was no breach of contract.

Petitioner's assertion (Pet. 15-17) that the leases and the regulations required that the proposed terms had to be provided by the expiration of the 20-year term is without merit. The plain language of 43 C.F.R. 193.16 (1954) provided only that notice of proposed readjustments would be given "whenever feasible, before the expiration of each such twenty-year period." Thus, "notice of an intent to readjust terms and conditions of a coal lease given a coal company on or shortly before the 20-year anniversary date preserves the Department's right under the MLLA and the lease provisions to readjust the terms within a reasonable time thereafter." *FMC Wyoming Corp.*, 816 F.2d at 500; Pet. App. 174a; see also 816 F.2d at 500 n.8; Pet. App. 174 n.8. The government thus did not retroactively change the terms of its contracts with petitioner.

2. It is well settled that Congress may, as it did in petitioner's leases, reserve to itself the authority to amend the law and thus the terms by which continuation of the leases would be offered without offending the Takings Clause of the Fifth Amendment. See *Bowen* v. *Public Agencies Op-*

posed to Social Security Entrapment, 477 U.S. 41, 55 (1986); cf. *Sinking-Fund Cases,* 99 U.S. 700, 720 (1879). Nor does the right to readjust the terms of a lease make the contract illusory, as asserted by the petitioner. Pet. 17. Readjustments are imposed only at the end of the lease period. During the period between readjustments, the provisions of the leases are binding.

3. Finally, it is clear that Congress intended the requirements of the FCLLA to apply to pre-FCLLA coal leases upon post-FCLLA readjustment of their terms. First, the plain language chosen by Congress dictates that result. Section 7 of the MLLA provides that the Secretary may readjust the terms and conditions of leases at their 20-year anniversary dates as he or she may determine, "unless otherwise provided by law at the expiration of such periods." In 1976, Congress amended the MLLA in the FCLLA so that new requirements were "otherwise provided by law at the expiration" of the leases at issue here. See *FMC Wyoming Corp.,* 816 F.2d at 501; Pet. App. 175a-176a.

Second, the legislative history makes clear that Congress intended that the terms of the FCLAA were to be applied at the time of readjustment. Representative Mink addressed that question during the legislative debates: "The 533 existing Federal leases would be unaffected by the bill except to the extent its provisions are made applicable upon the periodic ten year adjustment of the lease terms, or upon the inclusion of an existing lease in a logical mining unit." See 122 Cong. Rec. 489 (1976); *id.* at 25,464 (remarks of Rep. Baucus); see also S. Rep. No. 1169, 95th Cong., 2d Sess. 7 (1978) ("All leases would of course be subject to the provisions of the 1976 amendments at the expiration of their original lease term[s]."); *FMC Wyoming Corp.,* 816 F.2d at 501 n.11; Pet. App. 176a n.11.

The court of appeals in *FMC Wyoming Corp.* v. *Hodel, supra,* correctly held the FCLLA applicable to pre-FCLAA leases such as petitioner's leases, and this Court denied certiorari. Petitioner's claim has not been, and cannot be, distinguished from that rejected in *FMC Wyoming Corp.*

CONCLUSION

The petition for a writ of certiorari should be denied.

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REPLY BRIEF FOR THE PETITIONER EAST TEXAS STEEL FACILITIES, INC.

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TABLE OF CONTENTS

ARGUMENT..... 1

I. Respondents Try to Mislead the Court by Quoting Out of Context and Misstating Interior's Contract Obligations: 43 C.F.R. § 193.16 Required Both Notice *and* Performance; Interior's Failure To Perform Breached the Contract..... 1

II. Respondents Fail To Address the Issue of Whether Congress Intended the Mineral Lands Leasing Act (1920) To Create An Open-Ended Lease With Interior Free To Change Or Cancel All Terms While Unalterably Binding Lessee.... 3

CONCLUSION..... 4

TABLE OF AUTHORITIES

CASES:

Bowen v. Public Agencies Opposed to Social Security Entrapment, 477 U.S. 41 (1986)..... 3

FMC Wyoming Corp. v. Hodel, 816 F. 2d 496 (10th Cir. 1987), cert. denied, 108 S. Ct. 722 (1988)..... 2

Pan American Petroleum & Transp. Co. v. United States, 273 U. S. 456 (1927)..... 3,4

Rosebud Coal Sales Co. v. Andrus, 667 F. 2d 949 (10th Cir. 1982)..... 3

Willard, Sutherland & Co.v.United States, 262 U.S. 489 (1918)..... 3

STATUTES AND REGULATIONS:

Federal Coal Leasing Amendments Act of 1976, Pub. L. No. 94-377, 90 Stat. 1083..... 2-3

Mineral Lands Leasing Act of 1920, ch.85, 41 Stat. 437..... 3

43 C.F.R. §193.16 (1954)..... 1-3

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I. Respondents Try to Mislead the Court by Quoting Out of Context and Misstating Interior's Contract Obligations: 43 C.F.R. §193.16 Required Both Notice *and* Performance to Exercise the Option; Interior's Failure to Perform Breached the Contracts.

Each of petitioner's five federal coal leases had the same option contract reserving Interior's right to make changes on the 20th anniversary of each lease. Pet. App. 5a, 128a, 137a, 146a, 150a-153a (assignment agreement), 159a. Respondents argue that notice (promise to perform) alone sufficed to exercise the option, and to support that argument quote *only* the notice requirements of the governing regulation, 43 C.F.R. §193.16 (1954). Res. Br. 5. Respondents, however, quote the regulation out of context with the performance requirements conspicuously missing. The regulation reads in whole:

> The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period

> succeeding the date of the lease unless otherwise provided by law at the time of the expiration periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. *Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after the receipt of the notice, he will be deemed to have agreed to such terms.* Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period. *(emphasis supplied)*

The regulation clearly requires that the notice must state proposed terms (the mode of acceptance is that Interior perform by giving the proposed terms). This is true, as a lessee receiving notice with no terms would have no basis to file an objection. Further the terms must accompany the notice, not be received later, as the lessee has 30 days from receipt to file objection.

Contrary to Respondents' contention, the Tenth Circuit's decision in *FMC Wyoming Corp. v. Hodel*, 816 F. 2d 496 at 500, 500 n.8, Pet. App.174a does not support Respondents' interpretation. *FMC* made **no** analysis and **no** findings concerning the application of 43 C.F.R. §193.16 (1954); it considered only regulations promulgated under the Federal Coal Leasing Amendments Act of 1976 (FCLAA), Pub. L. No. 94-377, 90 Stat. 1083.

Highly relevant, however, is the Tenth Circuit's decision in *Rosebud Coal Sales Co. v. Andrus*, 667 F.2d 667 (10th Cir. 1982), Pet. App.197a. *Rosebud* held that the leases, MLLA and the pre-FCLAA regulation expressly required performance and that the pre-FCLAA regulation alone added the requirement of notice (promise to perform). Further, the Court agreed with the trial court record: that in applying the pre-FCLAA regulations Interior's "historic practice" (and specifically from 1960 to 1976) was to complete readjustments, send notice and proposed terms, by the 20th anniversary, "or very soon thereafter." *Ibid.* at 952, Pet App. 199a. Thus Respondents' own practice in applying the pre-FCLAA regulations confirms Petitioner's argument that proposed terms had to accompany notice.*

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*Respondents apparently agree that 43 C.F.R. §193.16 [see next page]

II. Respondents Fail to Address the Issue of Whether Congress Intended the Mineral Lands Leasing Act (1920) To Create An Open-Ended Lease With Interior Free to Change Or Cancel All Terms While Unalterably Binding Lessee.

Respondents do not address the questions before this Court. Congress' right to reserve expressly the authority to amend a law is not questioned. The questions presented are (1) whether Congress made such an expressed reservation in the MLLA, and (2) if Congress did make such an expressed reservation, whether MLLA leases are contracts in light of the Tenth Circuit's construction of that reservation as one of "unlimited powers" to change or cancel at will a federal coal lease on its 20th anniversary. More specifically, does the MLLA proviso, "unless otherwise provided by law," make such a reservation, and is the Tenth Circuit's construction of that proviso correct? Since this Court has already found MLLA coal leases are contracts that bind the government; and, further, that unlimited reserved powers (thereby providing an escape clause) destroys a contract, the Tenth Circuit's construction of MLLA coal contracts cannot stand. *Pan American Petroleum & Transp. Co. v. United States*, 273 U.S. 456 (1927) and *Willard, Sutherland & Co. v. United States*, 262 U.S. 489 (1923).

Finally, contrary to respondents' contention, Congress did not use in the MLLA the important amending language of *Bowen v. Public Agencies Opposed to Social Security Entrapment*, 477 U.S. 41, 55 (1986); therefore *Bowen* is not on point. Such explicit amending language should not be read into a surplusage MLLA proviso where no evidence of specific Congressional intent to do so exists. The Tenth Circuit's

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(1954) was the correct regulation to apply, even though Interior actually applied regulations promulgated under FCLAA to petitioner's leases. As lease provisions are binding between 20th anniversary periods (Res. Br. 3, 5), applying the FCLAA regulations to the option contract before the 20th anniversary of the leases was retroactive application of FCLAA to the leases. Respondents apparently see this as technical violation, asserting both regulations required only notice. However, as seen above, the pre-FCLAA regulation required performance; imposing the FCLAA regulation allowing notice (promise to perform) to suffice waived a condition precedent in favor of the lessee and breached the contracts.

construction, however, goes further. It reads such language into the MLLA to allow the application of FCLAA, which also has no evidence of specific Congressional intent that should apply to Petitioner's leases. A construction based on a construction, of court-implied legislative intent in FCLAA founded on surplusage language in MLLA, represents a radical departure from common rules of statutory construction.

CONCLUSION

This Court in 1927 found the purpose of the MLLA was to bind the government to a lease contract, as opposed to complete alienation of the public lands. *Pan American, supra.* The Tenth Circuit's construction of MLLA federal coal leases makes these contracts ephemeral creatures of mere shifting regulatory policy, exempting the government but shackling the lessee to unconscionable terms. Such an interpretation was not Congress' intent in 1920 and clearly put no one on notice of such an intent. Who would contract to develop resources and invest millions where the owner was free to freeze out the developer and impose drastic new terms or even cancel the contract! No common citizen could get away with this; and if the government does, it creates a special commercial law for the government's benefit and makes a mockery of good faith dealing.

This case is a clear vertical conflict; a decision failing to apply and discuss controlling cardinal rules of contract law and Supreme Court precedent. The petition for a writ of certiorari should be granted.

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